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Presidential Documents

Title 3—

The President

Executive Order 13531 of February 18, 2010

National Commission on Fiscal Responsibility and Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Executive Office of the President the National Commission on Fiscal Responsibility and Reform (Commission).

Sec. 2. *Membership.* The Commission shall be composed of 18 members who shall be selected as follows:

(a) six members appointed by the President, not more than four of whom shall be from the same political party;

(b) three members selected by the Majority Leader of the Senate, all of whom shall be current Members of the Senate;

(c) three members selected by the Speaker of the House of Representatives, all of whom shall be current Members of the House of Representatives;

(d) three members selected by the Minority Leader of the Senate, all of whom shall be current Members of the Senate; and

(e) three members selected by the Minority Leader of the House of Representatives, all of whom shall be current Members of the House of Representatives.

Sec. 3. *Co-Chairs.* From among his appointees, the President shall designate two members, who shall not be of the same political party, to serve as Co-Chairs of the Commission.

Sec. 4. *Mission.* The Commission is charged with identifying policies to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run. Specifically, the Commission shall propose recommendations designed to balance the budget, excluding interest payments on the debt, by 2015. This result is projected to stabilize the debt-to-GDP ratio at an acceptable level once the economy recovers. The magnitude and timing of the policy measures necessary to achieve this goal are subject to considerable uncertainty and will depend on the evolution of the economy. In addition, the Commission shall propose recommendations that meaningfully improve the long-run fiscal outlook, including changes to address the growth of entitlement spending and the gap between the projected revenues and expenditures of the Federal Government.

Sec. 5. *Reports.* (a) No later than December 1, 2010, the Commission shall vote on the approval of a final report containing a set of recommendations to achieve the mission set forth in section 4 of this order.

(b) The issuance of a final report of the Commission shall require the approval of not less than 14 of the 18 members of the Commission.

Sec. 6. *Administration.* (a) Members of the Commission shall serve without any additional compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(b) The Commission shall have a staff headed by an Executive Director.

Sec. 7. *General.* (a) The Commission shall terminate 30 days after submitting its final report.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 18, 2010.

[FR Doc. 2010–3725
Filed 2–22–10; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0418; Directorate Identifier 2009–NM–020–AD; Amendment 39–16201; AD 2010–04–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190–100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> During routine inspection procedures on the wing assembly line it was identified the possibility of cracks and deformation developing during assembly on the internal wing spars and rib flanges, causing a safe[ty] margin reduction.
>
> * * * * *

The unsafe condition is cracking and deformation of wing spar and rib flanges, which could result in loss of structural integrity of the wing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 30, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 30, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 7, 2009 (74 FR 21285). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During routine inspection procedures on the wing assembly line it was identified the possibility of cracks and deformation developing during assembly on the internal wing spars and rib flanges, causing a safe[ty] margin reduction.
>
> * * * * *

The unsafe condition is cracking and deformation of wing spar and rib flanges, which could result in loss of structural integrity of the wing. Corrective actions include performing a detailed inspection for damage on wing spar I, II, and III flanges and on certain rib flanges, and contacting Agência Nacional de Aviação Civil (ANAC) (or its delegated agent) and Embraer for an approved repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Remove Certain Model ERJ 190 Airplanes

Embraer requests that we remove Model ERJ 190–100 ECJ airplanes from the applicability of the NPRM, because that model is not included in the effectivity statement of Embraer Service Bulletin 190–57–0023, dated June 9, 2008, and is not subject to the unsafe condition addressed by the NPRM.

We agree, for the reasons provided by the commenter. We have revised the applicability statement of the AD accordingly.

Request To Change Repair Contact Authority

Embraer requests that we change paragraph (f)(2) of the NPRM to require that any repair of detected cracking or deformation be approved by either the FAA or the ANAC, and that Embraer may be contacted for repair support. Embraer states that the appropriate corrective action would be applying an authority-approved repair to the damaged wing rib and spar flanges.

We disagree with the commenter's request to change paragraph (f)(2) of this AD. As specified in paragraph (g)(2) of this AD, corrective actions obtained from a manufacturer cannot be used unless they are FAA-approved. Paragraph (g)(2) of this AD also states that corrective actions are considered FAA-approved if they are approved by the State of Design Authority, in this case ANAC (or its delegated agent). We have not changed the AD in this regard.

Request To State When No Further Action Is Required

Embraer requests that we add a paragraph (f)(3) to the NPRM stating "If no cracking or deformation is detected during the inspection required by paragraph (f)(1) of this AD, no further action is required." Embraer did not provide justification for this request.

We agree with Embraer's request to add the statement as clarification. We have therefore added paragraph (f)(3) to the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 27 products of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $22,950, or $850 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16201. Docket No. FAA–2009–0418; Directorate Identifier 2009–NM–020–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190–100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes, certificated in any category, serial numbers 19000002, 19000004, and 19000006 through 19000062 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During routine inspection procedures on the wing assembly line it was identified the possibility of cracks and deformation developing during assembly on the internal wing spars and rib flanges, causing a safe[ty] margin reduction.

* * * * *

The unsafe condition is cracking and deformation of wing spar and rib flanges, which could result in loss of structural integrity of the wing. Corrective actions include performing a detailed inspection for damage on wing spar I, II, and III flanges and on certain rib flanges, and contacting Agência Nacional de Aviação Civil (ANAC) (or its delegated agent) and Embraer for an approved repair.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before the accumulation of 5,000 total flight cycles on the airplane, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection of the left and right wing rib and spars I, II, and III flanges to detect cracking or deformation, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 190–57–0023, dated June 9, 2008.

(2) If any cracking or deformation is detected during the inspection required by paragraph (f)(1) of this AD, before further flight, send the inspection results and request for repair instructions to ANAC (or its delegated agent) and Embraer Technical Support; e-mail: *structure@embraer.com.br;* and do the repair.

(3) If no cracking or deformation is detected during the inspection required by paragraph (f)(1) of this AD, no further action is required by this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(2) of this AD requires that you repair the crack(s) before further flight.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch,

ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2008–10–03, effective October 21, 2008; and Embraer Service Bulletin 190–57–0023, dated June 9, 2008; for related information.

Material Incorporated by Reference

(i) You must use Embraer Service Bulletin 190–57–0023, dated June 9, 2008, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; *telephone:* +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; *e-mail: distrib@embraer.com.br; Internet: http://www.flyembraer.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 5, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3116 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0038; Directorate Identifier 2009–NM–110–AD; Amendment 39–16203; AD 2010–04–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A380–841, –842, and –861 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During the flight test campaign of the A380–861 model (Engine Alliance powered), some cracks were found on the Movable Flap Track Fairing number 6 (MFTF#6).

These cracks were located at the pivot attachment support-ring and at the U-frame in the attachment area to aft-kinematic. In addition, delamination has been observed within the monolithic Carbon Fibre Reinforced Plastic (CFRP) structure around the pivot support-ring.

This condition, if not corrected, could lead to in-flight loss of the MFTF#6, potentially resulting in injuries to persons on the ground.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 10, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 10, 2010.

On May 28, 2009 (74 FR 22422, May 13, 2009), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

We must receive comments on this AD by April 9, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On May 1, 2009, the FAA issued AD 2009–10–07, Amendment 39–15902 (74 FR 22422, May 13, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued that AD, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0152, dated July 14, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During the flight test campaign of the A380–861 model (Engine Alliance powered), some cracks were found on the Movable Flap Track Fairing number 6 (MFTF#6).

These cracks were located at the pivot attachment support-ring and at the U-frame in the attachment area to aft-kinematic. In addition, delamination has been observed within the monolithic Carbon Fibre Reinforced Plastic (CFRP) structure around the pivot support-ring.

This condition, if not corrected, could lead to in-flight loss of the MFTF#6, potentially resulting in injuries to persons on the ground.

To prevent the risk of a MFTF#6 detachment, EASA AD 2008–0216 (which corresponds to FAA AD 2009–10–07) required an inspection programme in order to

detect cracks before they become critical and in case of findings to replace the MFTF#6.

This AD, which supersedes EASA AD 2008–0216:

- Cancels the MFTF#6 General Visual Inspection requirement,
- Refers to Airbus Service Bulletin A380–57–8014 Revision 1 * * *
- Introduces an optional terminating action [installing reinforced part].

AD 2009–10–07 applies to all Airbus Model A380–841, –842, and –861 airplanes. This AD retains the requirements of AD 2009–10–07. Airplanes were removed from the applicability of AD 2009–10–07 by excluding airplanes on which Airbus modification 68729 is done in production. This AD also revises the compliance time for the inspections of replaced parts. The compliance time is reduced for certain parts and extended for certain other parts, depending on the flight cycles since first installation of the part. The replacement parts must be inspected within the thresholds specified in paragraph (f)(1) of this AD.

Relevant Service Information

Since we issued AD 2009–10–07, Airbus has issued Mandatory Service Bulletin A380–57–8014, Revision 01, dated June 5, 2009; and Service Bulletin A380–57–8017, dated June 5, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0038; Directorate Identifier 2009–NM–110–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15902 (74 FR 22422, May 13, 2009) and adding the following new AD:

2010–04–10 Airbus: Amendment 39–16203. Docket No. FAA–2010–0038; Directorate Identifier 2009–NM–110–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 10, 2010.

Affected ADs

(b) This AD supersedes AD 2009–10–07, Amendment 39–15902.

Applicability

(c) This AD applies to Airbus Model A380–841, –842, and –861 airplanes, certificated in any category, all serial numbers, except airplanes on which Airbus modification 68729 has been done in production.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

During the flight test campaign of the A380–861 model (Engine Alliance powered), some cracks were found on the Movable Flap Track Fairing number 6 (MFTF#6).

These cracks were located at the pivot attachment support-ring and at the U-frame in the attachment area to aft-kinematic. In addition, delamination has been observed within the monolithic Carbon Fibre Reinforced Plastic (CFRP) structure around the pivot support-ring.

This condition, if not corrected, could lead to in-flight loss of the MFTF#6, potentially resulting in injuries to persons on the ground.

To prevent the risk of a MFTF#6 detachment, EASA AD 2008–0216 required an inspection programme in order to detect cracks before they become critical and in case of findings to replace the MFTF#6.

This AD, which supersedes EASA AD 2008–0216:

- Cancels the MFTF#6 General Visual Inspection requirement,
- Refers to Airbus Service Bulletin A380–57–8014 Revision 1, * * *
- Introduces an optional terminating action.

Restatement of Requirements of AD 2009–10–07, With Revised Inspection, Service Information, and Compliance Time for the Inspection of Replaced Parts

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the applicable time specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD for the left- and right-hand MFTF#6, do a special detailed (ultrasonic and high-frequency eddy current) inspection of the filet radii of pivot supports, monolithic carbon fibre reinforced plastic structures, and radii of the U-frame, for cracking and delamination in accordance with the Accomplishment Instructions of Airbus Service Bulletin A380–57–8014, dated November 21, 2008; or Airbus Mandatory Service Bulletin A380–57–8014, Revision 01, dated June 5, 2009. After the effective date of this AD, use only Revision 01.

(i) For Airbus Model A380–841 and –842 airplanes: Before the MFTF#6 has accumulated 500 total flight cycles since its first installation on an airplane, or within 30 flight hours after May 28, 2009 (the effective date of AD 2009–10–07), whichever occurs later.

(ii) For Model A380–861 airplanes: Before the MFTF#6 has accumulated 100 total flight cycles since its first installation on an airplane, or within 30 flight hours after May 28, 2009, whichever occurs later.

(2) If no cracking and no delamination are found during any inspection required by paragraph (f)(1) of this AD, repeat the inspections required by paragraph (f)(1) of this AD thereafter at intervals not to exceed the applicable time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) For Model A380–841 and –842 airplanes: 50 flight cycles.

(ii) For Model A380–861 airplanes: 10 flight cycles.

(3) If any cracking or delamination is found during any inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, replace the MFTF#6 with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A380–57–8014, dated November 21, 2008; or Airbus Mandatory Service Bulletin A380–57–8014, Revision 01, dated June 5, 2009. For parts replaced before the effective date of this AD, repeat the inspections specified in paragraph (f)(1) of this AD at the later of the times specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD. For parts replaced on or after the effective date of this AD, repeat the inspections specified in paragraph (f)(1) of this AD at the applicable time defined in paragraph (f)(1) of this AD. After the effective date of this AD, use only Revision 01 for the replacement.

(i) At the applicable time defined in paragraph (f)(2) of this AD.

(ii) At the applicable time defined in paragraph (f)(1) of this AD.

New Requirements of This AD

Actions and Compliance

(g) Unless already done, do the following actions.

(1) In case of MFTF#6 replacement, submit a report using Appendix 01 of Airbus Service Bulletin A380–57–8014, dated November 21, 2008, to Airbus Central Entity, Dept SEES5, 1, Rond Point Maurice Bellonte, 31707 Blagnac, France; e-mail *Frederic.molinier@airbus.com;* at the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD. The report must include the serial number of the removed MFTF#6, the associated airplane manufacturer serial number, and the number of flight cycles accumulated by the MFTF#6 at the time of removal.

(i) If the MFTF#6 replacement was done on or after the effective date of this AD: Submit the report within 30 days after the MFTF#6 removal.

(ii) If the MFTF#6 replacement was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(2) Replacement of the MFTF#6 with a reinforced MFTF#6, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A380–57–8017, dated June 5, 2009, terminates the requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2009–0152, dated July 14, 2009; Airbus Service Bulletin A380–57–8014, dated November 21, 2008; Airbus Mandatory Service Bulletin A380–57–8014, Revision 01, dated June 5, 2009; and Airbus Service Bulletin A380–57–8017, dated June 5, 2009; for related information.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A380–57–8014, including Appendix 01, dated November 21, 2008; Airbus Mandatory Service Bulletin A380–57–8014, Revision 01, dated June 5, 2009; and Airbus Service Bulletin A380–57–8017, dated June 5, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Mandatory Service Bulletin A380–57–8014, Revision 01, dated June 5, 2009; and Airbus Service Bulletin A380–57–8017, dated June 5, 2009; under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus Service Bulletin A380–57–8014, including Appendix 01, dated November 21, 2008, on May 28, 2009 (74 FR 22422, May 13, 2009).

(3) For service information identified in this AD, contact Airbus SAS—EANA (Airworthiness Office); 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 562 110 253; Fax +33 562 110 307; e-mail *account.airworth-A380@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 5, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3121 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0093; Directorate Identifier 97–ANE–06–AD; Amendment 39–16198; AD 2010–04–05]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems 1A103/TCM Series Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for McCauley Propeller Systems 1A103/TCM series propellers. That AD requires, for certain serial numbers (S/Ns) of McCauley Propeller Systems 1A103/TCM series propellers, initial and repetitive visual and dye penetrant inspections for cracks in the propeller hub, replacement of propellers with cracks that do not meet acceptable limits, and rework of propellers with cracks that meet acceptable limits. This AD requires, for all McCauley Propeller Systems 1A103/TCM series propellers, the same actions but at reduced compliance times. This AD also requires inspections of the bolt holes, reaming holes if necessary, and inspections of steel reinforcement plates and gaskets. This AD results from 16 reports received of propeller hubs found cracked since AD 2003–12–05 was issued. We are issuing this AD to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane.

DATES: Effective March 10, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 10, 2010.

We must receive any comments on this AD by April 26, 2010.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Thomas Teplik, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; e-mail: *thomas.teplik@faa.gov;* telephone: (316) 946–4196; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION: The FAA amends 14 CFR part 39 by superseding AD 2003–12–05, Amendment 39–13190 (68 FR 35155, June 12, 2003). That AD requires, for certain S/Ns of McCauley Propeller Systems 1A103/TCM series propellers, initial and repetitive visual and dye penetrant inspections for cracks in the propeller hub, replacement of propellers with cracks that do not meet acceptable limits, and rework of propellers with cracks that meet acceptable limits. That AD was the result of reports of hub cracking on the camber (forward) side of the propeller hub near the attachment bolt holes on certain propellers. That condition, if not corrected, could result in propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane.

Actions Since AD 2003–12–05 Was Issued

Since AD 2003–12–05 was issued, we received 16 reports of propeller hubs found cracked. Two of the cracks were on propellers outside the propeller range of serial numbers affected by AD 2003–12–05. These cracks began at a bolt hole and extended through to the hub outer surface. These propellers had fewer than 3,000 operating hours time-in-service (TIS). AD 2003–12–05 required inspections starting at 3,000 operating hours TIS. We have not yet been able to determine the cause of the propeller hub cracking.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) No. ASB221E, dated January 28, 2010. That ASB describes, for all McCauley Propeller Systems 1A103/TCM series propellers, procedures for initial and repetitive visual and dye penetrant inspections for cracks in the propeller hub, removal from service of propellers with cracks that do not meet acceptable limits, and rework of propellers with cracks that meet acceptable limits.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other McCauley Propeller Systems 1A103/TCM series propellers of the same type design. We are issuing this AD to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane. This AD requires, for all McCauley Propeller Systems 1A103/TCM series propellers, initial and repetitive visual and dye penetrant inspections for cracks in the propeller hub, including bolt holes, reaming holes if necessary, inspections of steel reinforcement plates and gaskets, removal from service of propellers with cracks that do not meet acceptable limits, and rework of propellers with cracks that meet acceptable limits. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0093; Directorate Identifier 97–

ANE–06–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13190 (68 FR 35155, June 12, 2003), and by adding a new airworthiness directive, Amendment 39–16198, to read as follows:

2010–04–05 McCauley Propeller Systems: Amendment 39–16198. Docket No. FAA–2010–0093; Directorate Identifier 97–ANE–06–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 10, 2010.

Affected ADs

(b) This AD supersedes AD 2003–12–05, Amendment 39–13190.

Applicability

(c) This AD applies to McCauley Propeller Systems 1A103/TCM series propellers, all serial numbers. These propellers are installed on, but not limited to Cessna 152, Cessna A152, Reims F152, and Reims FA152 series airplanes, and on airplanes with Lycoming 0–235–L2C reciprocating engines modified by Supplemental Type Certificates SA1763SO, SA5695NM, SA1000NW, and SA432NE.

Unsafe Condition

(d) This AD results from 16 reports received of propeller hubs found cracked since AD 2003–12–05 was issued. We are issuing this AD to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection of Propellers Not Previously Inspected

(f) For propellers not previously inspected using McCauley Service Bulletin (Alert) No. 221C, dated September 7, 1999, or McCauley Alert Service Bulletin (ASB) No. ASB221D, dated January 28, 2008, do the following:

(1) For propellers with more than 1,500 operating hours time-since-new (TSN) or unknown operating hours TSN on the effective date of this AD, within the next 50 operating hours time-in-service (TIS), do the actions specified in paragraphs (h) through (m) of this AD.

(2) For propellers with 1,500 or fewer operating hours TSN on the effective date of this AD, upon reaching 1,500 operating hours TSN or within the next 50 operating hours TIS, whichever is later, do the actions specified in paragraphs (h) through (m) of this AD.

Initial Inspection of Propellers Previously Inspected

(g) For propellers previously inspected using McCauley Service Bulletin (Alert) No. 221C, dated September 7, 1999, or McCauley ASB No. ASB221D, dated January 28, 2008, do the following:

(1) For propellers with more than 1,500 operating hours TSN on the effective date of this AD, and with 750 or more operating hours time-since-last-inspection (TSLI), within the next 50 operating hours TIS, do the actions specified in paragraphs (h) through (m) of this AD.

(2) For propellers with more than 1,500 operating hours TSN on the effective date of this AD, and with fewer than 750 operating hours TSLI, before reaching 750 operating hours TSLI or within the next 50 operating hours TIS, whichever occurs later, do the actions specified in paragraphs (h) through (m) of this AD.

(h) Visual- and dye-penetrant-inspect for cracks in the propeller hub.

(i) Inspect the bolt holes and ream the holes if necessary.

(j) Inspect the steel reinforcement plates and gaskets.

(k) Remove propellers that are not within the bolt hole inspection limits or have cracks that are not within the rework limits.

(l) Rework propellers that have cracks that meet acceptable rework limits.

(m) Use the Accomplishment Instructions of McCauley ASB No. ASB221E, dated January 28, 2010, to do the inspections, rework, and removals from service.

Repetitive Propeller Inspections

(n) Thereafter, for all propellers, within every additional 750 operating hours TIS, perform the actions in paragraphs (h) through (m) of this AD.

Alternative Methods of Compliance

(o) The Manager, Wichita Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(p) Under 39.23, we are limiting the availability of special flight permits for this AD. Special flight permits are available only if:

(1) The operator has not observed abnormal propeller vibration or abnormal engine vibration.

(2) The operator has not made earlier reports of abnormal propeller vibration, abnormal engine vibration, or other abnormal propeller operations that have not been addressed.

Related Information

(q) Contact Thomas Teplik, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; e-mail: *thomas.teplik@faa.gov;* telephone: (316) 946–4196; fax: (316) 946–4107, for more information about this AD.

Material Incorporated by Reference

(r) You must use McCauley Propeller Systems Alert Service Bulletin No. ASB221E, dated January 28, 2010, to perform the inspections, rework, and removals from service required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact McCauley Propeller Systems, 5800 E. Pawnee, Wichita, KS 67218, telephone: (800) 621–7767; e-mail: *productsupport@mccauley.textron.com;* Web: *http://www.mccauley.textron.com,* for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 8, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–3113 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0125; Directorate Identifier 2010–CE–005–AD; Amendment 39–16208; AD 2010–04–15]

RIN 2120–AA64

Airworthiness Directives; SCHEIBE-Flugzeugbau GmbH Model SF 25C Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The aileron hinges and the stabilizer are fastened with steel tube rivets and brass tube rivets.

During a complete overhaul, broken brass tube rivets have been detected. It has been determined that, due to production quality issue, the upset heads of the brass tube rivets could break under normal load conditions.

This condition, if not corrected, could possibly lead to loss of control of the powered sailplane.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 15, 2010.

On March 15, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by April 9, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090; e-mail: *gregory.davison@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency AD No. 2010–0011–E, dated January 25, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The aileron hinges and the stabilizer are fastened with steel tube rivets and brass tube rivets.

During a complete overhaul, broken brass tube rivets have been detected. It has been determined that, due to production quality issue, the upset heads of the brass tube rivets could break under normal load conditions.

This condition, if not corrected, could possibly lead to loss of control of the powered sailplane.

For the reason described above, this AD requires an inspection of the affected tube rivets and, if necessary, their replacement.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

SCHEIBE-Flugzeugbau GmbH has issued SCHEIBE AIRCRAFT GMBH Service Bulletin 653–64, dated November 10, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information

referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the brass tube rivets that are used to fasten the aileron hinges and the stabilizer are breaking. Investigation revealed that the brass tube rivets could break under normal load conditions, which could result in loss of control of the glider. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0125; Directorate Identifier 2010–CE–005–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–15 SCHEIBE-Flugzeugbau GmbH: Amendment 39–16208; Docket No. FAA–2010–0125; Directorate Identifier 2010–CE–005–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model SF 25C gliders, serial numbers 44365 through 44370, 44372, 44374, 44375, and 44377 through 44450, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The aileron hinges and the stabilizer are fastened with steel tube rivets and brass tube rivets.

During a complete overhaul, broken brass tube rivets have been detected. It has been determined that, due to production quality issue, the upset heads of the brass tube rivets could break under normal load conditions.

This condition, if not corrected, could possibly lead to loss of control of the powered sailplane.

For the reason described above, this AD requires an inspection of the affected tube rivets and, if necessary, their replacement.

Actions and Compliance

(f) Unless already done, do the following actions in accordance with SCHEIBE AIRCRAFT GMBH Service Bulletin 653–64, dated November 10, 2009.

(1) Within the next 2 days after March 15, 2010 (the effective date of this AD), remove the paint of the tube rivet heads at the aileron-hinges at wing rib No. 16 (in the area located at the lower side of the wing), disconnect the aileron from the wings, disconnect the elevator from the stabilizer, and inspect the tube rivet heads at the stabilizer to fuselage fittings to determine if the tube rivet heads are steel or brass.

(2) If the aileron hinges and the stabilizer to fuselage fittings are connected to the ribs and the spar with steel tube rivets, no further action is required.

(3) If the aileron hinges or the stabilizer to fuselage fittings are connected to the ribs and the spar with brass tube rivets 8x0, 75 mm, before further flight after the inspection required in paragraph (f)(1) of this AD, replace the brass tube rivets with screws.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090; e-mail: *gregory.davison@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No. 2010–0011–E, dated January 25, 2010, and SCHEIBE AIRCRAFT GMBH Service Bulletin 653–64, dated November 10, 2009, for related information.

Material Incorporated by Reference

(i) You must use SCHEIBE AIRCRAFT GMBH Service Bulletin 653–64, dated November 10, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Scheibe Aircraft GmbH, Am Flugplatz 5, 73540 Heubach, Germany; telephone: +49(0)7173 184286; fax: 4(0)7173 185587.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on February 12, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3186 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1027; Directorate Identifier 2009–NM–143–AD; Amendment 39–16197; AD 2010–04–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been several in-service cases reported of impact damage to the blowout (decompression) panel protective cage assemblies installed in the aft baggage cargo compartment. When damaged, these cages could prevent proper operation of the blowout panels, with potential degradation of smoke detection and fire extinguishing capabilities in the event of a fire.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 30, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 30, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 5, 2009 (74 FR 57264). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been several in-service cases reported of impact damage to the blowout (decompression) panel protective cage assemblies installed in the aft baggage cargo compartment. When damaged, these cages could prevent proper operation of the blowout panels, with potential degradation of smoke detection and fire extinguishing capabilities in the event of a fire.

This directive mandates replacement of the existing cages with new cages that have greater damage resistance.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Conclusion

We reviewed the available data, and determined that air safety and the public interest require adopting the AD

with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 361 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,263 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $517,313, or $1,433 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–04 Bombardier, Inc.: Amendment 39–16197. Docket No. FAA–2009–1027; Directorate Identifier 2009–NM–143–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10268, inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) airplanes; and Bombardier, Inc. Model CL–600–2D24 (Regional Jet Series 900) airplanes; serial numbers 15001 through 15205, inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There have been several in-service cases reported of impact damage to the blowout (decompression) panel protective cage assemblies installed in the aft baggage cargo compartment. When damaged, these cages could prevent proper operation of the blowout panels, with potential degradation of smoke detection and fire extinguishing capabilities in the event of a fire.

This directive mandates replacement of the existing cages with new cages that have greater damage resistance.

Actions and Compliance

(f) Unless already done, within 5,000 flight hours after the effective date of this AD, replace the existing cage assemblies in the aft baggage cargo compartment, in accordance with Bombardier Service Bulletin 670BA–25–071, dated May 15, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–30, dated July 6, 2009; and Bombardier Service Bulletin 670BA–25–071, dated May 15, 2009; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 670BA–25–071, dated May 15, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; e-mail: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 4, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3096 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1107; Directorate Identifier 2009–NM–138–AD; Amendment 39–16202; AD 2010–04–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 Series Airplanes and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

[European Aviation Safety Agency (EASA)] AD 2006–0191 [which corresponds to FAA AD 2006–21–08] required the installation of new heat shield panels with drainage over the air conditioning packs in order to avoid an undetected fire in this zone following a fuel leak from the centre tank.

These new heat shield panels have holes. In case of fuel leaking through these holes from the centre tank, any fuel vapour may develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.***

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 30, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 30, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 1, 2009 (74 FR 62713). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

* * * * *

* * * EASA AD 2006–0191 [which corresponds to FAA AD 2006–21–08] required the installation of new heat shield panels with drainage over the air conditioning packs in order to avoid an undetected fire in this zone following a fuel leak from the centre tank.

These new heat shield panels have holes. In case of fuel leaking through these holes from the centre tank, any fuel vapour may develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane. Airbus has developed a repair solution for these holes to prevent a fuel vapour ignition source in this area and improve the protection of the hot air equipment.

[T]his AD requires the installation of plugs on the heat shield panels of the Left Hand (LH) and Right Hand (RH) Air Conditioning packs.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ

substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 12 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,060, or $255 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–09 Airbus: Amendment 39–16202. Docket No. FAA–2009–1107; Directorate Identifier 2009–NM–138–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category; on which Airbus Modification 49520 has been embodied in production, or on which Airbus Service Bulletin A330–21–3096, Revision 01, or Airbus Service Bulletin A340–21–4107, Revision 01, has been embodied in service; except those airplanes on which Airbus Modification 58551 has been embodied in production.

(1) Airbus Model A330–201, –202, –203, –223, and –

(2) Airbus Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air conditioning.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * * *

* * * EASA [European Aviation Safety Agency] AD 2006–0191 [which corresponds to FAA AD 2006–21–08] required the installation of new heat shield panels with drainage over the air conditioning packs in order to avoid an undetected fire in this zone following a fuel leak from the centre tank.

These new heat shield panels have holes. In case of fuel leaking through these holes from the centre tank, any fuel vapour may develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane. Airbus has developed a repair solution for these holes to prevent a fuel vapour ignition source in this area and improve the protection of the hot air equipment.

[T]his AD requires the installation of plugs on the heat shield panels of the Left Hand (LH) and Right Hand (RH) Air Conditioning packs.

Actions and Compliance

(f) Unless already done, within 24 months after the effective date of this AD: Plug the six receptacle holes on the heat shield of the left-hand air conditioning pack and plug the four receptacle holes on the heat shield of the right-hand air conditioning pack, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–21–3148, dated January 30, 2009 (for Model A330–201, –202, –203, –223, and –243 airplanes); or Airbus Mandatory Service Bulletin A340–21–4147, dated January 30, 2009 (for Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes); as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0150, dated July 9, 2009; Airbus Mandatory Service Bulletin A330–21–3148, dated January 30, 2009; and Airbus Mandatory Service Bulletin A340–21–4147, dated January 30, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–21–3148, including Appendix 1, dated January 30, 2009; or Airbus Mandatory Service Bulletin A340–21–4147, including Appendix 1, dated January 30, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330–A340@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 5, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3119 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0615; Directorate Identifier 2009–NM–043–AD; Amendment 39–16206; AD 2010–04–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–203, –221, –222 Airplanes; and Model A300 F4–605R and –622R Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An A300–600 operator reported two events of IPECO pilot seat moved in the aft position, one during take-off roll and one during climb out. The investigation of these events showed that a broken/missing spring contributed to the seat not being correctly locked.

An unwanted movement of pilot or co-pilot seat in the aft direction is considered as potentially dangerous, especially during the take-off phase when the speed of the aeroplane is greater than 100 knots and until landing gear retraction.

* * * * *

The unsafe condition is potential loss of control of the airplane during take-off and landing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 30, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 30, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 16, 2009 (74 FR 34509). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

An A300–600 operator reported two events of IPECO pilot seat moved in the aft position, one during take-off roll and one during climb out. The investigation of these events showed that a broken/missing spring contributed to the seat not being correctly locked.

An unwanted movement of pilot or co-pilot seat in the aft direction is considered as potentially dangerous, especially during the take-off phase when the speed of the aeroplane is greater than 100 knots and until landing gear retraction.

To prevent further incidents of inadvertent flight crew seat aft movement, this AD requires repetitive inspections of the affected seat springs and replacement of missing or broken parts. In addition, this AD requires replacement of the affected seats with modified P/N 3A218–000X–01–2 seats. Installation of both pilot and co-pilot seats P/N 3A218–000X–01–2 on an aeroplane constitutes terminating action for the repetitive inspection requirements of this AD for that aeroplane.

The unsafe condition is potential loss of control of the airplane during take-off and landing. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the AD

The Air Line Pilots Association, International (ALPA), supports the NPRM.

Request for Extension of Proposed Compliance Time for Modification

FedEx and UPS request that we extend the compliance time for the modification specified in paragraph (f)(4) of the NPRM from 6 months to 30 months. The commenters explain that 6 months does not provide enough time for large operators with many aircraft to receive the parts kits. UPS explains further that their proposed compliance time will enable adequate industry support of the modification and at the same time enable operators to utilize regularly scheduled maintenance opportunities.

We disagree with extending the proposed compliance time for the modification. While we recognize that

the initial lead time for parts kit delivery was excessive, IPECO now has a large stock of complete parts kits ready to be delivered. No further issue regarding availability of parts kits is foreseen. However, if parts kits availability becomes a problem in the future, under the provisions of paragraph (g)(1) of this AD, we will consider requests for approval of an extension of the compliance time if data are submitted to substantiate that the extension would provide an acceptable level of safety, provided that the operators are performing the repetitive inspections specified in paragraph (f) of this AD. We have made no change to the AD in this regard.

Request for Permission To Replace Old Parts With New Parts

FedEx requests that we revise the NPRM to allow for replacing the existing locking springs with new springs of the same design as an interim action to delay installation of the modification. FedEx explains that all of its broken locking springs were found on seats that had been in service at least 4 years since there was a record of the springs being changed. FedEx states that the springs that were returned appeared to be corroded, which indicates that the failure of the springs was due to corrosion instead of fatigue.

We do not agree with the request to revise this AD to allow for replacing the existing locking springs with new springs of the same design as an interim action to delay installation of the modification. While we recognize FedEx's assertion that failure of the springs was due to corrosion instead of fatigue, Airbus did not identify which failure mode was actually involved, as fatigue cracks could induce spring protection alteration and then corrosion. Further, it is possible that corrosion could actually lead to the weakening of the spring, where the fatigue effort would deteriorate the spring. Regardless of the findings by FedEx, parts kits are now available for the replacement of the locking springs, so there is no need to delay installation of the modification. However, if operators experience a delay in receiving kits, they may request approval of an AMOC in accordance with the procedures in paragraph (g)(1) of this AD. We have made no change to the AD in this regard.

Request To Use an Alternate Inspection Method

FedEx requests that the NPRM be revised to allow operators to use other methods to perform the detailed inspection required in paragraph (f)(1) of this AD. FedEx explains that removing the seat bottom cushion and trying to view the springs through lightening holes in the seat bottom is difficult. FedEx explains further that maintenance personnel have used a mirror to perform the inspection or inspected the seat springs by looking up directly from underneath the seat. FedEx indicates that the springs are exposed on the bottom side of the seats and can be more easily viewed for defects by using this method.

We agree that other methods of performing the detailed inspection required in paragraph (f)(1) of this AD might exist for the reasons stated in the previous paragraph. But, we do not agree to change this AD in this regard because insufficient data have been submitted to substantiate that the alternative inspection method would provide an acceptable level of safety. However, under the provisions of paragraph (g)(1) of this AD, we will consider requests for approval of an alternative inspection method if sufficient data are submitted to substantiate that the alternative inspection method would provide an acceptable level of safety.

Request for Clarification

UPS requests that we change the word "modified" in paragraph (f)(3) of the NPRM to clarify that there is no modification required by that paragraph. UPS explains that the service information listed in paragraph (f)(3) of the NPRM requires inspection and replacement, but not modification.

We agree to clarify paragraph (f)(3) of this final rule for the reason stated by UPS. We have changed "modified" to "replaced" in paragraph (f)(3) of this AD.

Explanation of Additional Change

We have specified the issue numbers of each Airbus operations engineering bulletin throughout this final rule to adhere to requirements of the Office of the Federal Register's (OFR), for material incorporated by reference (IBR).

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 132 products of U.S. registry. We also estimate that it will take about 11 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,214 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $283,668, or $2,149 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–13 Airbus: Amendment 39–16206. Docket No. FAA–2009–0615; Directorate Identifier 2009–NM–043–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of the AD, certificated in any category, having IPECO part number (P/N) 3A218–000X–01–1 pilot or co-pilot mechanical seats installed.

(1) Airbus Model A310–203, A310–221, and A310–222 airplanes, all serial numbers.

(2) Airbus Model A300 F4–605R and A300 F4–622R airplanes, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An A300–600 operator reported two events of IPECO pilot seat moved in the aft position, one during take-off roll and one during climb out. The investigation of these events showed that a broken/missing spring contributed to the seat not being correctly locked.

An unwanted movement of pilot or co-pilot seat in the aft direction is considered as potentially dangerous, especially during the take-off phase when the speed of the aeroplane is greater than 100 knots and until landing gear retraction.

To prevent further incidents of inadvertent flight crew seat aft movement, this AD requires repetitive inspections of the affected seat springs and replacement of missing or broken parts. In addition, this AD requires replacement of the affected seats with modified P/N 3A218–000X–01–2 seats. Installation of both pilot and co-pilot seats P/N 3A218–000X–01–2 on an aeroplane constitutes terminating action for the repetitive inspection requirements of this AD for that aeroplane.

The unsafe condition is potential loss of control of the airplane during take-off and landing.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 90 days after the effective date of this AD, and thereafter at intervals not to exceed 30 days, do a detailed visual inspection of the two springs of the pilot seat and co-pilot seat locking device, in accordance with Airbus Mandatory Service Bulletin A310–25A2199 or A300–25A6210, both dated July 9, 2008, as applicable.

(i) If only one spring is missing or found damaged during any inspection required by paragraph (f)(1) of this AD, within 10 days after the inspection or before further flight, whichever occurs later, replace the spring with a serviceable part, in accordance with Airbus Mandatory Service Bulletin A310–25A2199 or A300–25A6210, both dated July 9, 2008, as applicable. Before an airplane may be dispatched with one spring missing or damaged, the instructions contained in Airbus A310 Operations Engineering Bulletin 160, Issue 2, dated October 2008; or Airbus A300–600 Operations Engineering Bulletin 121, Issue 1, dated May 2008; as applicable; must be accomplished by the flightcrew.

(ii) If two springs are missing or found damaged during any inspection required by paragraph (f)(1) of this AD, before further flight, replace the springs in accordance with Airbus Mandatory Service Bulletin A310–25A2199 or A300–25A6210, both dated July 9, 2008, as applicable.

(2) Replacing parts in accordance with Airbus Mandatory Service Bulletin A310–25A2199 or A300–25A6210, both dated July 9, 2008, as applicable, is not a terminating action for the repetitive inspections required in paragraph (f)(1) of this AD.

(3) As of the effective date of this AD, do not install an IPECO pilot or co-pilot mechanical seat P/N 3A218–000X–01–1 on any airplane, unless the seat has been inspected and replaced as applicable, in accordance with Airbus Mandatory Service Bulletin A310–25A2199 or A300–25A6210, both dated July 9, 2008, as applicable.

(4) Within 6 months after the effective date of this AD, modify the airplane by replacing the pilot and co-pilot mechanical seats P/N 3A218–000X–01–1 with P/N 3A218–000X–01–2 seats, in accordance with Airbus Mandatory Service Bulletin A310–25–2202 or A300–25–6214, both dated February 3, 2009, as applicable.

(5) Installing both pilot and co-pilot seats P/N 3A218–000X–01–2 in accordance with Airbus Mandatory Service Bulletin A310–25–2202 or A300–25–6214, both dated February 3, 2009, as applicable, on any airplane is a terminating action for the repetitive inspections required by paragraph (f)(1) of this AD for that airplane.

(6) As of 6 months after the effective date of this AD, do not install an IPECO pilot or co-pilot mechanical seat P/N 3A218–000X–01–1 on any airplane.

(7) Although Airbus Mandatory Service Bulletins A310–25A2199 and A300–25A6210, both dated July 9, 2008, specify to submit certain information to the manufacturer, this AD does not include that requirement.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information tells you to submit information to Airbus, paragraph (f)(7) of this AD specifies that such submittal is not required.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector,

your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0045, dated February 27, 2009, and the service information listed in Table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

Airbus Service Information	Issue/revision	Date
Airbus A300–600 Operations Engineering Bulletin 121	1	May 2008.
Airbus A310 Operations Engineering Bulletin 160	2	October 2008.
Airbus Mandatory Service Bulletin A300–25–6214	Original	February 3, 2009.
Airbus Mandatory Service Bulletin A300–25A6210	Original	July 9, 2008.
Airbus Mandatory Service Bulletin A310–25–2202	Original	February 3, 2009.
Airbus Mandatory Service Bulletin A310–25A2199	Original	July 9, 2008.

Material Incorporated by Reference

(i) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Information	Issue/revision	Date
Airbus A300–600 Operations Engineering Bulletin 121	1	May 2008.
Airbus A310 Operations Engineering Bulletin 160	2	October 2008.
Airbus Mandatory Service Bulletin A300–25–6214	Original	February 3, 2009.
Airbus Mandatory Service Bulletin A300–25A6210 excluding Appendix 1, and including Appendices 2 and 3.	Original	July 9, 2008.
Airbus Mandatory Service Bulletin A310–25–2202	Original	February 3, 2009.
Airbus Mandatory Service Bulletin A310–25A2199 excluding Appendix 1, and including Appendices 2 and 3.	Original	July 9, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 11, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3222 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0121; Directorate Identifier 2010–CE–001–AD; Amendment 39–16207; AD 2010–04–14]

RIN 2120–AA64

Airworthiness Directives; Augustair, Inc. Models 2150, 2150A, and 2180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Augustair, Inc. Models 2150, 2150A, and 2180 airplanes. This AD requires you to inspect the vertical stabilizer front spar for cracks and loose fasteners, repair any cracks and loose fasteners found, and reinforce the vertical stabilizer spar regardless if cracks are found. This AD results from six reports of airplanes with a cracked vertical stabilizer front spar. We are issuing this AD to detect and correct cracks in the vertical stabilizer front spar, which could result in separation of the vertical stabilizer from the airplane. This failure could lead to loss of control.

DATES: This AD becomes effective on March 24, 2010.

On March 24, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by April 9, 2010.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Augustair, Inc., 1809 Hephzibah McBean Rd., Hephzibah, Georgia 30815; telephone:

(706) 836–8610; fax: (706) 925–2847; Internet: *http://VG21squadron.com;* e-mail: *lorenperry@aol.com.*

To view the comments to this AD, go to *http://www.regulations.gov.* The docket number is FAA–2010–0121; Directorate Identifier 2010–CE–001–AD.

FOR FURTHER INFORMATION CONTACT: Hal Horsburgh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5553; fax: (404) 474–5606; e-mail: *hal.horsburgh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a maintenance problem report on an Augustair, Inc. Model 2180 indicating the vertical stabilizer front spar was cracked completely across the Web. In addition, the fasteners attaching the splice plates spanning the spar flange cuts were loose. We have also received five additional reports of Augustair, Inc. Models 2150A and 2180 airplanes with cracks in the vertical stabilizer front spar.

This condition, if not corrected, could result in separation of the vertical stabilizer from the airplane. This failure could lead to loss of control.

Relevant Service Information

We reviewed Augustair Service Bulletin SB2009–1, Revision B, dated February 2, 2010. The service information describes procedures for doing a detailed inspection of the vertical stabilizer front spar for cracks or loose fasteners, repairing any damage found, and installing a doubler to the vertical stabilizer front spar.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to inspect the vertical stabilizer front spar for cracks and loose fasteners, repair any cracks found, replace loose or damaged fasteners, and reinforce the vertical stabilizer spar regardless if cracks are found.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks in the vertical stabilizer front spar could lead to separation of the vertical stabilizer from the airplane and consequent loss of control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number "FAA–2010–0121; Directorate Identifier 2010–CE–001–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2010–04–14 Augustair, Inc.: Amendment 39–16207; Docket No. FAA–2010–0121; Directorate Identifier 2010–CE–001–AD.

Effective Date

(a) This AD becomes effective on March 24, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Numbers	Note
2150	FP–1 through FP–10 and MS–1–P	These aircraft were produced by Morrisey Aviation Inc.
2150A	SFP–11, SP12 through SP–33, and SP–35 through SP–45	These aircraft were produced by Shinn Engineering Company, Santa Ana, California, under licensing agreement with Morrisey Aviation Inc.
2150A	VAC–50 through VAC–52, and VAC–54–76 through VAC–189–85.	These aircraft were produced by Varga Aircraft Corporation, Chandler, Arizona.
2180	VAC–68–77 through VAC–191–82	These aircraft were produced by Varga Aircraft Corporation, Chandler, Arizona.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Unsafe Condition

(e) This AD is the result of six reports of Augustair, Inc. Models 2150A and 2180 airplanes with a cracked vertical stabilizer front spar. We are issuing this AD to detect and correct cracks in the vertical stabilizer front spar, which could result in separation of the vertical stabilizer from the airplane. This failure could lead to loss of control.

Compliance

(f) To address this problem, you must do the following, unless already done:

(1) Before further flight after March 24, 2010 (the effective date of this AD), visually inspect the vertical stabilizer front spar for cracks and other damage (loose fasteners, corrosion, scratches) following section 2, paragraph A, of Augustair Service Bulletin SB2009–1, Revision B, dated February 2, 2010.

(2) At the applicable compliance time specified in paragraph (f)(2)(i) and (f)(2)(ii) of this AD, do a detailed inspection of the vertical stabilizer front spar for cracks and other damage, repair any damage found, and install a doubler to the vertical stabilizer front spar following section 2, paragraph B, of Augustair Service Bulletin SB2009–1, Revision B, dated February 2, 2010.

(i) Before further flight after the inspection required in paragraph (f)(1) of this AD where cracks or other damage is found; or

(ii) Within 10 hours time-in-service (TIS) after the inspection required in paragraph (f)(1) of this AD where no cracks or other damage was found.

(3) Report the inspection results from paragraph (f)(2) of this AD within 30 days after the inspection or within 30 days after March 24, 2010 (the effective date of this AD), whichever occurs later. Send your report to ATTN: Hal Horsburgh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; fax: (404) 474–5606; e-mail: *hal.horsburgh@faa.gov*. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056. Include in your report the following information:

(1) Aircraft model and serial number;

(2) Aircraft hours TIS;

(3) Answer whether any crack was found and, if so, the crack location and size;

(4) Description of any previous modifications or repairs in the vertical stabilizer spar attachment area or if the airplane was modified with a different engine model or propeller model than originally installed on the airplane and hours TIS when the modification was done;

(5) Corrective action taken;

(6) Answer yes or no whether other damage was found; and if so, describe it;

(7) Point of contact name and phone number; and

(8) Clearly identify the AD No., Docket No., and Directorate Identifier of the AD action requiring the report.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Hal Horsburgh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5553; fax: (404) 474–5606; e-mail: *hal.horsburgh@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Augustair Service Bulletin SB2009–1, Revision B, dated February 2, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Augustair, Inc., 1809 Hephzibah McBean Rd., Hephzibah, Georgia 30815; telephone: (706) 836–8610; fax: (706) 925–2847; Internet: *http://VG21squadron.com;* e-mail: *lorenperry@aol.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on February 11, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3185 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0747; Directorate Identifier 2009–NE–28–AD; Amendment 39–16199; AD 2010–04–06]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125–01 Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An in-flight engine shutdown incident was reported on an aircraft equipped with a TAE 125–01 engine. This was found to be mainly the result of a blockage of the scavenge oil gear pump due to a broken axial bearing of the turbocharger. The broken parts were sucked into the oil pump and caused seizure. With the pump inoperative, the separator overfilled, causing the engine oil to escape via the breather vent line. This caused a loss of oil that resulted in the engine overheating and subsequent shutdown.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: This AD becomes effective March 30, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 30, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 17, 2009 (74 FR 47759. That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> An in-flight engine shutdown incident was reported on an aircraft equipped with a TAE 125–01 engine. This was found to be mainly the result of a blockage of the scavenge oil gear pump due to a broken axial bearing of the turbocharger. The broken parts were sucked into the oil pump and caused seizure. With the pump inoperative, the separator overfilled, causing the engine oil to escape via the breather vent line. This caused a loss of oil that resulted in the engine overheating and subsequent shutdown.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and, in general, agree with its substance. But we have found it necessary to change the compliance from "within the next 50 flight hours after the effective date of this directive, but not later than 31 October 2007, whichever occurs first", to "within the next 50 flight hours after the effective date of this AD."

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 250 products of U.S. registry. We also estimate that it will take about one work-hour per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $80 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $40,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–06 Thielert Aircraft Engines GmbH: Amendment 39–16199. Docket No. FAA–2009–0747; Directorate Identifier 2009–NE–28–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) model TAE 125–01 reciprocating engines, all serial numbers (S/N) up to- and- including S/N 02–01–1018. These engines are installed in, but not limited to, Diamond Aircraft Industries Model DA42, Piper PA–28–161 (Supplemental Type Certificate (STC) No. SA03303AT), Cessna 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172R, 172S, F172F, F172G, F172H, F172K, F172L, F172M, F172N, and F172P (STC No. SA01303WI) airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An in-flight engine shutdown incident was reported on an aircraft equipped with a TAE 125–01 engine. This was found to be mainly the result of a blockage of the scavenge oil gear pump due to a broken axial bearing of the turbocharger. The broken parts were sucked into the oil pump and caused seizure. With the pump inoperative, the separator overfilled, causing the engine oil to escape via the breather vent line. This caused a loss of oil that resulted in the engine overheating and subsequent shutdown.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions within the next 50 flight hours after the effective date of this AD:

(1) Modify the engine oil system by installing a filter adaptor to the catch tank.

(2) Use the installation instructions in Thielert Service Bulletin No. TM TAE 125–0016, Revision 1, dated June 15, 2007, to install the filter adaptor.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) as follows:

(1) The MCAI compliance time states "within the next 50 flight hours after the effective date of this directive, but not later than 31 October 2007, whichever occurs first".

(2) This AD compliance time states "within the next 50 flight hours after the effective date of this AD."

Related Information

(g) Refer to European Aviation Safety Agency AD 2007–0232, dated August 23, 2007, for related information.

(h) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(i) You must use Thielert Service Bulletin No. TM TAE 125–0016, Revision 1, dated June 15, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 8, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–3117 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1025 Directorate Identifier 2009–CE–055–AD; Amendment 39–16204; AD 2010–04–11]

RIN 2120–AA64

Airworthiness Directives; Extra Flugzeugproduktions- und Vertriebs-GmbH Models EA–300/200 and EA–300/L Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 30, 2010.

On March 30, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 3, 2009 (74 FR 56748). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.

For the reasons stated above, this new AD mandates instructions for recurring inspections and modification in the area of the tail spring support in order to prevent separation of the tail landing gear which could result in serious damage to the airplane during landing.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 184 products of U.S. registry. We also estimate that it will take about 2 work-

hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $31,280 or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $460, for a cost of $2,160 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–04–11 Extra Flugzeugproduktions- und Vertriebs- GmbH: Amendment 39–16204; Docket No. FAA–2009–1025; Directorate Identifier 2009–CE–055–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category:

(1) Model EA–300/200 airplanes, serial numbers (S/N) 01 through 31, and 1032 through 1043; and

(2) Model EA–300/L airplanes, S/N 01 through 170, 172, 173, 1171, and 1174 through 1299.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.

For the reasons stated above, this new AD mandates instructions for recurring inspections and modification in the area of the tail spring support in order to prevent separation of the tail landing gear which could result in serious damage to the airplane during landing.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Before further flight after March 30, 2010 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 50 hours time-in-service, inspect the tail spring support for cracks in accordance with PART I of Extra Flugzeugproduktions- und Vertriebs- GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009.

(2) If any crack is found as a result of the inspections required by paragraph (f)(1) of this AD, before further flight, modify the tail spring support structure as instructed in PART II of Extra Flugzeugproduktions- und Vertriebs- GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009. Modification of the tail spring support structure terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(3) You may at any time modify the tail spring support structure as instructed in PART II of Extra Flugzeugproduktions- und Vertriebs- GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, to terminate the repetitive inspections required in paragraph (f)(1) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has

approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2009–0160, July 21, 2009 (corrected on July 28, 2009); and Extra Flugzeugproduktions- und Vertriebs- GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, for related information.

Material Incorporated by Reference

(i) You must use Extra Flugzeugproduktions- und Vertriebs- GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Extra Flugzeugproduktions- und Vertriebs- GmbH, Engineering Department/Office of Airworthiness/Quality Assurance, Schwarze Heide 21, 46569 Hünxe, Germany; Fax: +49 (0) 2858–9137–30; E-Mail: *extraaircraft@extraaircraft.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on February 10, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3120 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–16 and CP2010–16; Order No. 379]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail Contract 8 to the Competitive Product List. This action is consistent with a postal reform law. Republication of the Product Lists is also consistent with a statutory provision.

DATES: Effective February 23, 2010 and is applicable beginning January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 66242 (December 15, 2009).

Table of Contents

I. Introduction

The Postal Service seeks to add a new product identified as Express Mail Contract 8 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Express Mail Contract 8 to the Competitive Product List.[1] The Postal Service asserts that Express Mail Contract 8 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors' Decision No. 09–14 in Docket Nos. MC2010–5 and CP2010–5. *Id.* at 1. The Request has been assigned Docket No. MC2010–16.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–16.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, originally filed in Docket Nos. MC2010–5 and CP2010–5, authorizing certain Express Mail contracts, and Certification of Governors' Vote;[2] (2) a redacted version of the contract, and Certification of Governors' Vote;[3] (3) a requested change in the Competitive Product List;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] (5) a certification of compliance with 39 U.S.C. 3633(a);[6] and (6) an application for non-public treatment of the materials filed under seal.[7]

In the Statement of Supporting Justification, Susan M. Plonkey, Vice President, Sales, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Plonkey contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Express Mail Contract 8 is included with the Request. The contract was entered into on May 28, 2009, and will become effective as a Negotiated Service Agreement January 4, 2010. The contract provides that the Postal Service may not increase rates until after May 27, 2010. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.*, Attachment D.

In its Request, the Postal Service maintains that the supporting financial information, including the analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.*, Attachment D.

In Order No. 359, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.[8] On December 18, 2009, the Postal Service provided its response to the Commission's request for supplemental information.[9] On December 23, 2009, Chairman's Information Request No. 1 was issued for response by the Postal Service by December 28, 2009.[10] The Postal Service filed its response on December 28, 2009.[11]

III. Comments

Comments were filed by the Public Representatives.[12] No comments were submitted by other interested parties.

[1] Request of the United States Postal Service to Add Express Mail Contract 8 to Competitive Product List and Notice of Filing (Under Seal) of Supporting Data, December 11, 2009 (Request).

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–14, October 26, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

[8] Notice and Order Concerning Express Mail Contract 8 Negotiated Service Agreement, December 15, 2009 (Order No. 359).

[9] Supplemental Information Provided by the United States Postal Service in Response to Order No. 359, December 18, 2009.

[10] Chairman's Information Request No. 1, December 23, 2009 (CHIR No. 1).

[11] Responses of the United States Postal Service to Chairman's Information Request No. 1, December 28, 2009.

[12] Comments of Public Representatives in Response to PRC Order No. 359, December 23, 2009.

The Public Representatives state that the Postal Service's filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 3. The Public Representatives also believe that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* However, the Public Representatives assert that the Postal Service should have filed the instant contract with the Commission when it was executed in May of 2009. *Id.* at 4. As a result, the Public Representatives ask the Commission to "direct the Postal Service to file all existing Express Mail contracts which have not been previously filed." *Id.* The Public Representatives also request that the Commission encourage the Postal Service to submit all materials referenced in the relevant enabling Governors' Decision. *Id.* at 4–5.

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, responses to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail Contract 8 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail Contract 8 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.*, para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*, para. (h).

No commenter opposes the proposed classification of Express Mail Contract 8 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 8 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail Contract 8 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail Contract 8 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Express Mail Contract 8 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Commission agrees with the Public Representatives that the instant contract could have been filed with the Commission for approval at a much earlier date. The Commission also shares the Public Representatives' concern that other, similar contracts might exist. Accordingly, the Commission directs the Postal Service to file, by January 15, 2010, any outstanding Express Mail contract that may be categorized as a negotiated service agreement because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

In conclusion, the Commission approves Express Mail Contract 8 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. Express Mail Contract 8 (MC2010–16 and CP2010–16) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Commission directs the Postal Service to file, by January 15, 2010, any outstanding Express Mail contract that may be categorized as having competitive rates not of general applicability because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

3. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

4. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail

Single-Piece Letters/Postcards

Bulk Letters/Postcards

- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010-12 and R2010-2)

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals

[Reserved for Class Description]
- Within County Periodicals
- [Reserved for Product Description]
- Outside County Periodicals
- [Reserved for Product Description]

Package Services

[Reserved for Class Description]
- Single-Piece Parcel Post
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
- [Reserved for Product Description]
- Bound Printed Matter Flats
- [Reserved for Product Description]
- Bound Printed Matter Parcels
- [Reserved for Product Description]
- Media Mail/Library Mail
- [Reserved for Product Description]

Special Services

[Reserved for Class Description]
- Ancillary Services
- [Reserved for Product Description]
- Address Correction Service
- [Reserved for Product Description]
- Applications and Mailing Permits
- [Reserved for Product Description]
- Business Reply Mail
- [Reserved for Product Description]
- Bulk Parcel Return Service
- [Reserved for Product Description]
- Certified Mail
- [Reserved for Product Description]
- Certificate of Mailing
- [Reserved for Product Description]
- Collect on Delivery
- [Reserved for Product Description]
- Delivery Confirmation
- [Reserved for Product Description]
- Insurance
- [Reserved for Product Description]
- Merchandise Return Service
- [Reserved for Product Description]
- Parcel Airlift (PAL)
- [Reserved for Product Description]
- Registered Mail
- [Reserved for Product Description]
- Return Receipt
- [Reserved for Product Description]
- Return Receipt for Merchandise
- [Reserved for Product Description]
- Restricted Delivery
- [Reserved for Product Description]
- Shipper-Paid Forward
- [Reserved for Product Description]
- Signature Confirmation
- [Reserved for Product Description]
- Special Handling
- [Reserved for Product Description]
- Stamped Envelopes
- [Reserved for Product Description]
- Stamped Cards
- [Reserved for Product Description]
- Premium Stamped Stationery
- [Reserved for Product Description]
- Premium Stamped Cards
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services
- [Reserved for Product Description]
- Caller Service
- [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
- [Reserved for Product Description]
- Confirm
- [Reserved for Product Description]
- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]
- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
  - Inbound International Expedited Services 1 (CP2008–7)
  - Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
  - Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post (at non-UPU rates)
  - Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Air Parcel Post (at UPU rates)

Parcel Select

Parcel Return Service

International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)

[FR Doc. 2010–3475 Filed 2–22–10; 8:45 am]

BILLING CODE 7710–FW–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1077]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Assistant Administrator for Mitigation reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Shasta	City of Shasta Lake (09–09–0170P)	July 20, 2009; July 27, 2009, *Record Searchlight.*	Ms. Carol Martin, City Manager, City of Shasta Lake, P.O. Box 777, Shasta Lake, CA 96019.	July 10, 2009	060758
Colorado: El Paso	City of Colorado Springs (09–08–0556P)	July 8, 2009; July 15, 2009; *El Paso County Advertiser and News.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	June 30, 2009	080060
Maryland: Montgomery	Unincorporated areas of Montgomery County (09–03–0599P)	July 30, 2009; August 6, 2009; *Montgomery County Sentinel.*	The Honorable Isiah Leggett, Montgomery County Executive, Executive Office Building, 101 Monroe Street, 2nd Floor, Rockville, MD 20850.	July 24, 2009	240049
Ohio: Lorain	City of Avon (08–05–2056P)	January 12, 2009; January 19, 2009; *Morning Journal.*	The Honorable James A. Smith, Mayor, City of Avon, 36080 Chester Road, Avon, OH 44011.	December 31, 2008	390348
Oklahoma: Comanche ..	City of Lawton (08–06–1958P)	July 20, 2009; July 27, 2009; *Lawton Constitution.*	The Honorable John Purcell, Mayor, City of Lawton, 3006 Northeast Muse Circle, Lawton, OK 72507.	July 15, 2009	400049

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas:					
Fort Bend	Unincorporated areas of Fort Bend County (09–06–1930P)	July 23, 2009; July 30, 2009; *Fort Bend Sun.*	The Honorable Robert E. Hebert, PhD, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	July 17, 2009	480228
Fort Bend	Fort Bend County L.I.D. #7 (09–06–1930P)	July 23, 2009; July 30, 2009; *Fort Bend Sun.*	The Honorable Epifanio Salazar, Chairman, Board of Directors, Fort Bend County L.I.D. #7, 1300 Post Oak Boulevard, Suite 1400, Houston, TX 77027.	July 17, 2009	481594
Fort Bend	City of Sugarland (09–06–1930P)	July 23, 2009; July 30, 2009; *Fort Bend Sun.*	The Honorable James A. Thompson, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	July 17, 2009	480234
Travis	City of Pflugerville (09–06–0609P)	July 30, 2009; August 6, 2009; *Austin American Statesman.*	The Honorable Jeff Coleman, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	December 4, 2009	481028
Travis	Unincorporated areas of Travis County (09–06–0609P)	July 30, 2009; August 6, 2009; *Austin American Statesman.*	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	December 4, 2009	481026
Webb	City of Laredo (08–06–2270P)	July 10, 2009; July 17, 2009; *Laredo Morning Times.*	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	November 16, 2009	480651
Webb	City of Laredo (08–06–2721P)	July 9, 2009; July 16, 2009; *Laredo Morning Times.*	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	November 10, 2009	480651
Webb	Unincorporated areas of Webb County (09–06–1293P)	August 4, 2009; August 11, 2009; *Laredo Morning Times.*	The Honorable Danny Valdez, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	July 28, 2009	481059
Wisconsin:					
Dane	Unincorporated areas of Dane County (09–05–0486P)	July 24, 2009; July 31, 2009; *Wisconsin State Journal.*	The Honorable Kathleen M. Falk, Dane County Executive, City County Building, Room 118, 210 Martin Luther King Jr. Boulevard, Madison, WI 53703.	July 15, 2009	550077
Dane	Village of De Forest (09–05–0486P)	July 24, 2009; July 31, 2009; *Wisconsin State Journal.*	The Honorable Jeff Miller, Village President, Village of De Forest, 306 De Forest Street, De Forest, WI 53532.	July 15, 2009	550082

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Sandra K. Knight,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–3428 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1073]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Assistant Administrator for Mitigation reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Jefferson	City of Westminster (09–08–0595P).	July 9, 2009; July 16, 2009; *Westminster Window*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	November 13, 2009	080008
Florida:					
Alachua	City of Alachua (09–04–0431P).	June 3, 2009; June 10, 2009; *The Gainesville Sun*.	The Honorable Jean Calderwood, Mayor, City of Alachua, P.O. Box 9, Alachua, FL 32616.	October 8, 2009	120664
Alachua	Unincorporated areas of Alachua County (09–04–0431P).	June 3, 2009; June 10, 2009; *The Gainesville Sun*.	The Honorable Mike Byerly, Chairman, Alachua County Board of Commissioners, P.O. Box 2877, Gainesville, FL 32602.	October 8, 2009	120001
Collier	City of Marco Island (09–04–4108P).	July 20, 2009; July 27, 2009; *Naples Daily News*.	Mr. Steven T. Thompson, City Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	July 7, 2009	120426
Lake	Town of Lady Lake (09–04–2296P).	July 10, 2009; July 17, 2009; *Daily Commercial*.	The Honorable Ruth Kussard, Mayor Pro-Tem, Town of Lady Lake, 409 Fennell Boulevard, Lady Lake, FL 32159.	November 16, 2009	120613
Lake	Unincorporated areas of Lake County (09–04–2296P).	July 10, 2009; July 17, 2009; *Daily Commercial*.	The Honorable Welton G. Cadwell, Chairman, Lake County Board of Commissioners, P.O. Box 7800, Tavares, FL 32778.	November 16, 2009	120421
Idaho: Ada	Unincorporated areas of Ada County (09–10–0029P).	July 24, 2009; July 31, 2009; *Idaho Statesman*.	The Honorable Fred Tilman, Chairman Ada County, Board of Commissioners, 200 West Front Street, Boise, ID 83702.	July 15, 2009	160001
Illinois:					
Douglas	Unincorporated areas of Douglas County (09–05–1421P).	July 15, 2009; July 22, 2009; *Tuscola Journal*.	The Honorable Wayne Schable, Chair, Douglas County Board of Supervisors, P.O. Box 467, Tuscola, IL 61953.	June 30, 2009	170194
Douglas	City of Tuscola (09–05–1421P).	July 15, 2009; July 22, 2009; *Tuscola Journal*.	The Honorable Daniel J. Kleiss, Mayor, City of Tuscola, 214 North Main Street, Tuscola, IL 61953.	June 30, 2009	170195
Nevada: Clark	Unincorporated areas of Clark County (09–09–1287P).	July 9, 2009; July 16, 2009; *Las Vegas Review Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	June 25, 2009	320003
North Carolina:					
Cabarrus	Unincorporated areas of Cabarrus County (08–04–5265P).	July 15, 2009; July 22, 2009; *The Charlotte Observer*.	Mr. John D. Day, Manager, Cabarrus County, Governmental Center, P.O. Box 707, Concord, NC 28026.	July 6, 2009	370036
Cabarrus	City of Kannapolis (08–04–5265P).	July 15, 2009; July 22, 2009; *Independent Tribune*.	The Honorable Robert S. Misenheimer, Mayor, City of Kannapolis, P.O. Box 1199, Kannapolis, NC 28082.	July 6, 2009	370469
Oklahoma: Canadian	City of Oklahoma City (09–06–0829P).	July 16, 2009; July 23, 2009; *The Oklahoman*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Street, 3rd Floor, Oklahoma City, OK 73102.	July 2, 2009	405378
Tennessee:					

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Rutherford	Unincorporated areas of Rutherford County (09–04–3370P).	July 8, 2009; July 15, 2009; *Daily News Journal*.	The Honorable Ernest Burgess, Mayor, Rutherford County, County Courthouse, Room 101, Murfreesboro, TN 37130.	November 12, 2009	470165
Rutherford	Town of Smyrna (09–04–2810P).	July 8, 2009; July 15, 2009; *Daily News Journal*.	The Honorable Bobby G. Spivey, Mayor, Town of Smyrna, 315 South Lowry Street, Smyrna, TN 37167.	November 12, 2009	470169
Wilson	Unincorporated areas of Wilson County (09–04–3370P).	July 8, 2009; July 15, 2009; *Wilson Post*.	The Honorable Robert Dedman, County Mayor, Wilson County, 228 East Main Street, Lebanon, TN 37087.	November 12, 2009	470165
Texas:					
McLennan	Unincorporated areas of McLennan County (09–06–0597P).	June 26, 2009; July 3, 2009; *Waco Tribune Herald*.	The Honorable Jim Lewis, McLennan County Judge, P.O. Box 1728, Waco, TX 76701.	November 2, 2009	480456
McLennan	City of Waco (09–06–0597P).	June 26, 2009; July 3, 2009; *Waco Tribune Herald*.	The Honorable Virginia DuPuy, Mayor, City of Waco, P.O. Box 2570, Waco, TX 76702.	November 2, 2009	480461
Travis	City of Pflugerville (09–06–1373P).	July 23, 2009; July 30, 2009; *Pflugerville Pflag*.	The Honorable Jeff Coleman, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	November 30, 2009	481028
Virginia: Loudoun	Town of Leesburg (08–03–1561P).	June 24, 2009; July 1, 2009; *Loudoun Times Mirror*.	The Honorable Kristen C. Umstattd, Mayor, Town of Leesburg, P.O. Box 88, Leesburg, VA 20178.	October 29, 2009	510091
Wyoming: Sweetwater.	City of Rock Springs (09–08–0320P).	July 14, 2009; July 21, 2009; *Rock Springs Daily Rocket Miner*.	The Honorable Timothy A. Kaumo, Mayor, City of Rock Springs, 212 D Street, Rock Springs, WY 82901.	November 18, 2009	560051

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Sandra K. Knight,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–3440 Filed 2–22–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2009–0883]

RIN 1625–AB39

2010 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is increasing the rates for pilotage service on the Great Lakes by an average of 5.07% to generate sufficient revenue to cover allowable expenses, target pilot compensation, and return on investment. This increase reflects an August 1, 2010, increase in benchmark contractual wages and benefits and an adjustment for inflation. This rulemaking promotes the Coast Guard strategic goal of maritime safety.

DATES: This final rule is effective August 1, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0883 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0883 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Paul Wasserman, Chief, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1909, or e-mail *Paul.M.Wasserman@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

Table of Contents for Preamble

I. Abbreviations

AMOU American Maritime Officer Union
GLPAC Great Lakes Pilotage Advisory Committee
MISLE Coast Guard Marine Inspection, Safety, and Law Enforcement system
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget

II. Regulatory History

On October 30, 2009, we published a notice of proposed rulemaking entitled Great Lakes Pilotage Rates—2010 Annual Review and Adjustment in the **Federal Register** (NPRM, 74 FR 56153). We received five comments on the proposed rule. No public meeting was requested and none was held.

III. Background

We published a notice of proposed rulemaking on October 30, 2009 (NPRM, 74 FR 56153). The NPRM proposed an average 5.07% rate increase.

This rulemaking increases Great Lakes pilotage rates in accord with the methodology contained in Coast Guard regulations in 46 CFR parts 401–404. Our regulations implement the Great

Lakes Pilotage Act of 1960 ("the Act"), 46 U.S.C. Chapter 93, which requires foreign-flag vessels engaged in foreign trade to use U.S. registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. The Act also requires the Secretary of Homeland Security to "prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services," and requires annual rate reviews to be completed by March 1 of each year, with a "full ratemaking" to establish new base rates at least once every five years. 46 U.S.C. 9303(f).

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service, nor do we control the actual compensation that pilots receive. This is determined by each of the three District associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Great Lakes Pilotage Act of 1960, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Act, pilots assigned to vessels in these areas are only required to "be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master." 46 U.S.C. 9302(a)(1)(B).

Our pilotage regulations implement the Act's requirement for annual reviews of pilotage rates and a full ratemaking at least once every five years. 46 CFR 404.1. To assist in calculating pilotage rates, the regulations require pilotage associations to submit annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the full ratemaking, we contract with an independent accounting firm to conduct a full audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, we generate the pilotage rates using Appendix A to 46 CFR part 404. The last Appendix A review was concluded in 2006 (71 FR 16501, Apr. 3, 2006). Between the five-year full ratemaking intervals, we annually review the pilotage rates using Appendix C to part 404, and adjust rates when deemed appropriate. We conducted Appendix C reviews in 2007, 2008 and 2009 and increased rates in each year. The 2009 final rule was published on July 21, 2009 (74 FR 138), and took effect on August 1, 2009. We define the terms and formulas used in Appendix A and Appendix C in Appendix B to part 404.

This final rule concludes the annual Appendix C rate review for 2010, and increases rates by an average of 5.07% over the rates that took effect August 1, 2009.

IV. Discussion of Comments and Changes

Five comments were submitted during the NPRM public comment period.

Ratemaking methodology. One commenter recommended that we suspend any further action on this rulemaking until full consideration can be given to comments received in response to our July 21, 2009, request for public comments ("Great Lakes Pilotage Ratemaking Methodology," 74 FR 35838). In July, we requested comments on the adequacy of our current ratemaking methodology in light of the realities of Great Lakes commercial shipping and the need to fairly balance competing considerations. We noted that any comments would be referred to the Great Lakes Pilotage Advisory Committee (GLPAC), a group created by the Great Lakes Pilotage Act to advise us on significant issues relating to Great Lakes pilotage. GLPAC will review our methodology and the comments received in response to our notice, and may recommend changes. If we accept their recommendations, any changes would require regulatory action. GLPAC has just begun reviewing comments. As yet there is no timeline for any GLPAC recommendations and no rulemaking underway to modify the methodology. Therefore, we cannot complete the "full consideration" mentioned by the commenter before March 1, 2010, the Act's deadline for establishing any annual rate adjustment for 2010. The Act provides no exception to the March 1 deadline for consideration of possible changes to the existing rate review process. Thus, we cannot suspend work on this rulemaking without violating the law.

Another commenter reiterated comments the commenter made during the 2007 and 2009 rate reviews. In 2007, we explained our reasons for disagreeing with this commenter's analysis of the "150% factor" for designated waters; 2007 interim rule, 72 FR 8115 at 8117 (Feb. 23, 2007) and 2007 Final Rule, 72 FR 53158 at 53159 (July 18, 2007). In the 2009 final rule, we explained our reasons for disagreeing with this Commenter on the "Riker Report" on bridge hour calculations; 74 FR 35812 at 35814. As no new substantive information has been added, we will not repeat those earlier explanations. The commenter's suggestion that we amend the vessel weighting factor table in 46 CFR 401.400 is beyond the scope of this ratemaking.

Two commenters reiterated past comments about our use of rounding in bridge hour calculations, without adding new information. We fully discussed our use of rounding in the 2009 final rule, specifically with reference to Area 4, which is of particular concern to one of these commenters, and we will not repeat that discussion; 74 FR 35812 at 35813. The Area 4 calculations have not changed since the 2009 final rule.

A commenter said that our ratemaking is arbitrary and capricious because we count delay and detention in calculating bridge hours for Areas 6, 7, and 8, but not in Areas 4 and 5. No information was provided to substantiate this claim, which runs counter to our discussion of bridge hour calculations in ratemaking documents over many years, and which repeats an allegation made in 2007 and refuted in that year's interim rule: "The Coast Guard has never considered delay, detention, or travel time to be included in the definition of bridge hours and has never knowingly included these items in its bridge hour computations"; 72 FR 8115 at 8117, Feb. 23, 2007. Coast Guard did not consider delay, detention, or travel time in its bridge hour computations in this final rule.

Effective date. Another commenter stated that the Act requires any 2010 rate adjustment to take effect by March 1, 2010. The comment acknowledged that this is not the Coast Guard's interpretation of the Act. In our view, 46

U.S.C. 9303(f) only requires us to publish a rule announcing the 2010 rate adjustment by March 1, 2010; the rule's effective date should be delayed until the event triggering the need for adjustment actually takes place. In this case, the triggering event will be the benchmark contract changes that do not take effect until August 1, 2010. This commenter also said that, even under the Coast Guard's interpretation of the Act, some relevant rate factors have already changed. The commenter mentions bridge hour projections (discussed subsequently) and cost of living (which is determined using 2007 and 2008 data). However, the inflation factor is merely one of three components that make up projected total economic costs and has a minimal effect on the rate calculation. We decline to adjust the rates to reflect only minimal changes.

Supporting data. One commenter found it impossible to verify the calculations made in our NPRM. He mentioned the absence from the docket of two benchmark contracts and the absence of supporting documentation for the inflation factor used in our calculations. The two contracts were placed in the docket maintained by the Docket Management Facility on November 25, 2009, prior to the close of the public comment period. The NPRM, 74 FR 56153 at 56156, identified the parties to both contracts and accurately represented their terms. This enabled the commenter to verify the accuracy of our data, prior to November 25, 2009, by contacting any of the contractual parties. The data supporting the inflation factor did not appear in the docket maintained by the Docket Management Facility until December 2, 2009, after the close of the public comment period. However, the NPRM, 74 FR 56153 at 56159, identified Bureau of Labor Statistics (BLS) Midwest consumer price data as the source of our calculations, and this data was at all times available from the BLS Web site, *http://www.bls.gov.*

This same commenter also said that projected bridge hours for 2010 should be based on actual bridge hours for 2009 to date, along with results of consultations with stakeholders, including the shipping industry. Another commenter asked why we did not use 2009 actual hours. As stated in the NPRM, 74 FR 56153 at 56158, our 2010 projections are based on historical data (by which we mean actual figures for complete past shipping seasons) and information provided both by pilots and industry. To meet the Act's March 1 deadline for completion of each year's rate review, with a final rule that meets all applicable requirements of the Federal regulatory process, Coast Guard data collection for the following year's review typically begins in the early spring of the preceding year. Given that reality, it is impracticable for the Coast Guard to base NPRM projections for the next year on actual results from the preceding year. The commenter's estimate of a 25% drop in shipping traffic between 2008 and 2009 does not provide us with sufficiently detailed data on which to base a revision of our 2010 projections in this final rule. We do expect verified and complete 2009 actual data to inform our 2011 ratemaking.

District One pilot boat. Another commenter expressed a desire to have District One's purchase of a new pilot boat reflected in the 2010 rate adjustment, or as soon as possible. This comment is beyond the scope of this ratemaking, which is being conducted pursuant to our Appendix C methodology, because it asks for action that can be taken only under an Appendix A full ratemaking. The next Appendix A review is already in progress. It will be based on a 2008 audit of pilot association expenses. This could present a timing problem from District One's perspective, because their boat expenses did not begin until 2009 and therefore would not be captured in the 2008 audit data. Presumably to address that timing problem, in March 2009, District One petitioned the Coast Guard for a "modified" Appendix A review that could focus specifically on the pilot boat purchase. We could not grant that petition because there are no provisions for "modifying" Appendix A without conducting a rulemaking to make the modifications. However, we are mindful of the importance of this issue for District One, and we will ask GLPAC for its recommendations on how best to proceed, as part of GLPAC's consideration of public comments received in response to our July 2009 ratemaking methodology notice.

Miscellaneous. A commenter asked us to refer to "U.S. registered pilots" instead of "federally registered Great Lakes pilots" and we have done so.

V. Discussion of the Final Rule

A. Summary

We are increasing pilotage rates in accordance with the methodology outlined in Appendix C to 46 CFR part 404, by increasing rates an average 5.07% over the 2009 final rule, effective August 1, 2010. The new rates are unchanged from what we proposed in the NPRM. Table 1 shows the new rates for each Area.

TABLE 1—2010 AREA RATE CHANGES

If pilotage service is required in:	Then the proposed percentage increases over the current rate is:
Area 1 (Designated waters)	4.65
Area 2 (Undesignated waters)	5.33
Area 4 (Undesignated waters)	5.47
Area 5 (Designated waters)	4.96
Area 6 (Undesignated waters)	5.27
Area 7 (Designated waters)	4.73
Area 8 (Undesignated waters)	5.17
Overall Rate Change (percentage change in overall prospective unit costs/base unit costs; see Table 18)	5.07

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420), and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), have been increased by 5.07% in all Areas.

B. Calculating the Rate Adjustment

The Appendix C ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (*i.e.* pilot compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge

hours used in setting the base period rates;

Step 2: Calculate the "expense multiplier," the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual "projection of target pilot compensation" using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2009 Appendix C review. The Coast Guard also used the most recent union contracts between the American Maritime Officers Union (AMOU) and vessel owners and operators on the Great Lakes to determine target pilot compensation. Bridge hour projections for the 2010 season have been obtained from historical data, pilots, and industry. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of all calculations in the ratemaking methodology described below. Also, please note that in previous rulemakings we calculated an expense multiplier for each District. This was unnecessary because Appendix C calculations are based on area figures, not district figures. District figures, where they are shown in the following tables, now reflect only the arithmetical totals for each of the district's areas.

Step 1: Calculate the total economic cost for the base period. In this step, for each area, we add the total cost of target pilot compensation, all other recognized expenses, and the return element (net income plus interest). We divide this sum by the total bridge hours for each area. The result is the cost in each area of providing pilotage service per bridge hour for the base period. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD (2009), AREAS IN DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total * District One
Base operating expense (less base return element)	$538,155	$547,489	$1,085,644
Base target pilot compensation	+ $1,617,955	+ $981,589	+ $2,599,544
Base return element	+ $10,763	+ $16,425	+ $27,188
Subtotal *	= $2,166,873	= $1,545,503	= $3,712,376
Base bridge hours	÷ 5,203	÷ 5,650	÷ 10,853
Base cost per bridge hour	= $416.47	= $273.54	= $342.06

* As explained in the text preceding Step 1, District totals have been expressed differently from previous rulemakings. This accounts for slight differences between the District totals shown in Table 16 of the 2009 final rule and the District totals shown in this table.

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD (2009), AREAS IN DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total * District Two
Base operating expense	$502,087	$789,202	$1,291,289
Base target pilot compensation	+ $785,271	+ $1,617,955	+ $2,403,226
Base return element	+ $25,104	+ $31,568	+ $56,672
Subtotal	= $1,312,463	= $2,438,725	= $3,751,188
Base bridge hours	÷ 7,320	÷ 5,097	÷ 12,417
Base cost per bridge hour	= $179.30	= $478.46	= $302.10

* See footnote to Table 2.

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD (2009), AREAS IN DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total * District Three
Base operating expense	$814,358	$398,461	$641,580	$1,854,399
Base target pilot compensation	+ $1,570,542	+ $1,078,637	+ $1,374,224	+ $4,023,403
Base return element	+ $32,574	+ $11,954	+ $19,247	+ $63,776
Subtotal	= $2,417,474	= $1,489,052	= $2,035,052	= $5,941,578
Base bridge hours	÷ 13,406	÷ 3,259	÷ 11,630	÷ 28,295
Base cost per bridge hour	= $180.33	= $456.90	= $174.98	= $209.99

* See footnote to Table 2.

Step 2. Calculate the expense multiplier. In this step, for each Area, we add the base operating expense and the base return element. Then, we divide the sum by the base target pilot compensation to get the expense multiplier for each area. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, AREAS IN DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense	$538,155	$547,489	$1,085,644
Base return element	+ $10,763	+ $16,425	+ $27,188
Subtotal	= $548,918	= $563,914	= $1,112,832
Base target pilot compensation	÷ $1,617,955	÷ $981,589	$2,599,544
Expense multiplier	0.33927	0.57449	Not applicable (n/a)

TABLE 6—EXPENSE MULTIPLIER, AREAS IN DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Base operating expense	$502,087	$789,202	$1,291,289
Base return element	+ $25,104	+ $31,568	+ $56,672
Subtotal	= $527,192	= $820,770	= $1,347,962
Base target pilot compensation	÷ $785,271	÷ $1,617,955	$2,403,226
Expense multiplier	0.67135	0.50729	n/a

TABLE 7—EXPENSE MULTIPLIER, AREAS IN DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating Expense	$814,358	$398,461	$641,580	$1,854,399
Base return element	+ $32,574	+ $11,954	+ $19,247	+ $63,776
Subtotal	= $846,932	= $410,415	= $660,828	= $1,918,175
Base target pilot compensation	÷ $1,570,542	÷ $1,078,637	÷ $1,374,224	$4,023,403
Expense multiplier	0.53926	0.38049	0.48087	n/a

Step 3. Calculate annual projection of target pilot compensation. In this step, we determine the new target rate of compensation and the new number of pilots needed in each pilotage area, to determine the new target pilot compensation for each area.

(a) Determine new target rate of compensation. Target pilot compensation is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. For pilots in undesignated waters, we approximate the first mates' compensation and, in designated waters, we approximate the master's compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

As of May 2009, there are two current AMOU contracts, which we designate Agreement A and Agreement B. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Both Agreement A and Agreement B provide for a 3% wage increase effective August 1, 2010. Under Agreement A, the daily wage rate will be increased from $262.73 to $270.61. Under Agreement B, the daily wage rate will be increased from $323.86 to $333.57.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. Agreement A's 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 4 days for four weekends, 3 bonus days, and 1.5 holidays. Agreement B's 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8 shows new wage calculations based on Agreements A and B effective August 1, 2010.

TABLE 8—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
AGREEMENT A:		
$270.61 daily rate × 54.5 days	$14,748	$22,123
AGREEMENT A:		
Monthly total × 9 months = total wages	132,735	199,103
AGREEMENT B:		
$333.57 daily rate × 49.5 days	16,512	24,768
AGREEMENT B:		
Monthly total × 9 months = total wages	148,608	222,912

Both Agreements A and B include a health benefits contribution rate of $88.76 effective August 1, 2010. Agreement A includes a pension plan contribution rate of $33.35 per man-day. Agreement B includes a pension plan contribution rate of $43.55 per man-day. Both Agreements A and B provide a 401K employer matching rate, 5% of the wage rate. Neither Agreement A nor Agreement B includes a clerical contribution that appeared in earlier contracts. Per the AMOU, the multiplier used to calculate monthly benefits is 45.5 days.

Table 9 shows new benefit calculations based on Agreements A and B, effective August 1, 2010, and Table 10 totals the figures in Tables 8 and 9.

TABLE 9—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$737.42	$1,106.13
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $88.76 × 45.5 days	4,038.58	4,038.58
AGREEMENT B:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	825.60	1,238.40
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $88.76 × 45.5 days	4,038.58	4,038.58
AGREEMENT A:		
Monthly total benefits	= 6,293.42	= 6,662.13
AGREEMENT A:		
Monthly total benefits × 9 months	= 56,641	= 59,959
AGREEMENT B:		
Monthly total benefits	= 6,845.71	= 7,258.51
AGREEMENT B:		
Monthly total benefits × 9 months	= 61,611	= 65,327

TABLE 10—TOTAL WAGES AND BENEFITS

	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A: Wages	$132,735	$199,103
AGREEMENT A: Benefits	+ 56,641	+ 59,959
AGREEMENT A: Total	= 189,376	= 259,062
AGREEMENT B: Wages	148,608	222,912
AGREEMENT B: Benefits	+ 61,611	+ 65,327
AGREEMENT B: Total	= 210,219	= 288,239

Table 11 shows that approximately one third of U.S. Great Lakes shipping deadweight tonnage operates under Agreement A, with the remaining two thirds operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company		815,600
Mittal Steel USA, Inc.		38,826

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT—Continued

Company	Agreement A	Agreement B
Key Lakes, Inc.	361,385	
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,385 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2762%

Table 12 applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION, WEIGHTED

	Undesignated waters	Designated waters
AGREEMENT A:		
Total wages and benefits x percent tonnage	$189,376 x 29.7238% = 56,290	259,062 x 29.7238% = 77,003
AGREEMENT B:		
Total wages and benefits x percent tonnage	210,219 x 70.2762% = 147,734	288,239 x 70.2762% = 202,563
Total weighted average wages and benefits = projected target rate of compensation	56,290 + 147,734 = 204,024	77,003 + 202,563 = 279,566

(b) Determine number of pilots needed. Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service, we determine the number of pilots needed for ratemaking purposes in each area by dividing each area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters).

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, we project that vessel traffic in the 2010 navigation season, in all areas, will remain unchanged from the 2009 projections noted in Table 13 of the 2009 final rule.

Table 13, below, shows the projected bridge hours needed for each area, and the total number of pilots needed for ratemaking purposes after dividing those figures either by 1,000 or 1,800. As in 2008 and 2009, and for the same reasons, we rounded up to the next whole pilot except in Area 2 where we rounded up from 3.14 to 5, and in Area 4 where we rounded down from 4.07 to 4.

TABLE 13—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2010 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 40)
Area 1	5,203	1,000	6
Area 2	5,650	1,800	5
Area 4	7,320	1,800	4
Area 5	5,097	1,000	6
Area 6	13,406	1,800	8
Area 7	3,259	1,000	4
Area 8	11,630	1,800	7

(c) Determine the projected target pilot compensation for each area. The projection of new total target pilot compensation is determined separately for each pilotage area by multiplying the number of pilots needed in each area (see Table 13) by the projected target rate of compensation (see Table 12) for pilots working in that area. Table 14 shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

Pilotage area	Pilots needed (total = 40)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	x $279,566	$1,677,397
Area 2	5	x 204,024	1,020,120
Total, District One	11	n/a	2,697,517
Area 4	4	x 204,024	816,096
Area 5	6	x 279,566	1,677,397
Total, District Two	10	n/a	2,493,493
Area 6	8	x 204,024	1,632,191
Area 7	4	x 279,566	1,118,265
Area 8	7	x 204,024	1,428,167
Total, District Three	19	n/a	4,178,623

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 shows this calculation.

TABLE 15—PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense
Area 1	$1,677,397	× 0.33927	= $569,084
Area 2	1,020,120	× 0.57449	= 586,050
Total, District One	2,697,517	n/a	= 1,155,134
Area 4	816,096	× 0.67135	= 547,886
Area 5	1,677,397	× 0.50729	= 850,924
Total, District Two	2,493,493	n/a	= 1,398,810
Area 6	1,632,191	× 0.53926	= 880,177
Area 7	1,118,265	× 0.38049	= 425,493
Area 8	1,428,167	× 0.48087	= 686,767
Total, District Three	4,178,623	n/a	= 1,992,438

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics available at *http://www.bls.gov/xg_shells/ro5xg01.htm,* we have multiplied the results in Step 4 by a 1.037 inflation factor, reflecting an average inflation rate of 3.7% between 2007 and 2008, the latest years for which data are available. Table 16 shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. Projected operating expense	B. Increase, multiplied by inflation factor (= A × 1.037)	C. Projected target pilot compensation	D. Projected total economic cost (= B + C)
Area 1	$569,084	$590,140	$1,677,397	$2,267,537
Area 2	586,050	607,733	1,020,120	1,627,853
Total, District One	1,155,134	1,197,874	2,697,517	3,895,390
Area 4	547,886	568,158	816,096	1,384,253
Area 5	850,924	882,408	1,677,397	2,559,805
Total, District Two	1,398,810	1,450,566	2,493,493	3,944,058
Area 6	880,177	912,744	1,632,191	2,544,935
Area 7	425,493	441,236	1,118,265	1,559,501
Area 8	686,767	712,178	1,428,167	2,140,345
Total, District Three	1,992,438	2,066,158	4,178,623	6,244,781

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Table 17 shows this calculation.

TABLE 17—TOTAL UNIT COSTS

Pilotage area	A. Projected total economic cost	B. Projected 2009 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$2,267,537	5,203	$435.81
Area 2	1,627,853	5,650	288.12
Total, District One	3,895,390	10,853	358.92
Area 4	1,384,253	7,320	189.11
Area 5	2,559,805	5,097	502.22
Total, District Two	3,944,058	12,417	317.63
Area 6	2,544,935	13,406	189.84
Area 7	1,559,501	3,259	478.52
Area 8	2,140,345	11,630	184.04
Total, District Three	6,244,781	28,295	20.70
Overall	14,084,230	51,565	273.14

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1. Table 18 shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE IN UNIT COSTS

Pilotage area	A. Prospective unit costs	B. Base period unit costs	C. Percentage change from base (A divided by B; result expressed as percentage)
Area 1	$435.81	$416.47	4.65
Area 2	288.12	273.54	5.33
Total, District One	358.92	342.06	4.93
Area 4	189.11	179.30	5.47
Area 5	502.22	478.46	4.96
Total, District Two	317.63	302.10	5.14
Area 6	189.84	180.33	5.27
Area 7	478.52	456.90	4.73
Area 8	184.04	174.98	5.17
Total, District Three	220.70	209.99	5.10
Overall	273.14	259.97	5.07

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. Table 19 shows this calculation.

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS*

Pilotage	A. Base period rate	B. Percentage change in unit costs	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest dollar)
Area		(Multiplying Factor)		
Area 1:		4.65 (1.0465)		
—Basic pilotage	$16.95/km, 29.99/mi		$0.78/km, 1.39/mi	$17.73/km, 31.38/mi
—Each lock transited	375.47		17.44	393
—Harbor movage	1,229.41		57.11	1,287
—Minimum basic rate, St. Lawrence River	820.04		38.09	858
—Maximum rate, through trip	3,599.58		167.20	3,767
Area 2:		5.33 (1.0533)		
—6-hr. period	817.63		43.56	861

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS*—Continued

Pilotage	A. Base period rate	B. Percentage change in unit costs	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest dollar)
Area		(Multiplying Factor)		
—Docking or undocking	779.92		41.55	821
Area 4:		5.47 (1.0547)		
—6 hr. period	722.05		39.49	762
—Docking or undocking	556.46		30.44	587
—Any point on Niagara River below Black Rock Lock	1,420.45		77.69	1,498
Area 5 between any point on or in:		4.96 (1.0496)		
—Toledo or any point on Lake Erie W. of Southeast Shoal	1,299.46		64.51	1,364
—Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal	2,198.99		109.16	2,308
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	2,855.20		141.74	2,997
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	2,198.99		109.16	2,308
—Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,829.80		190.12	4,020
—Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,436.82		220.26	4,657
—Port Huron Change Point & Detroit River	2,877.20		142.83	3,020
—Port Huron Change Point & Detroit Pilot Boat	2,237.82		111.09	2,349
—Port Huron Change Point & St. Clair River	1,590.68		78.97	1,670
—St. Clair River	1,299.46		64.51	1,364
—St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,829.80		190.12	4,020
—St. Clair River & Detroit River/Detroit Pilot Boat	2,877.20		142.83	3,020
—Detroit, Windsor, or Detroit River	1,299.46		64.51	1,364
—Detroit, Windsor, or Detroit River & Southeast Shoal	2,198.99		109.16	2,308
—Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	2,855.20		141.74	2,997
—Detroit, Windsor, or Detroit River & St. Clair River	2,877.20		142.83	3,020
—Detroit Pilot Boat & Southeast Shoal	1,590.68		78.97	1,670
—Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal	2,198.99		109.16	2,308
—Detroit Pilot Boat & St. Clair River	2,877.20		142.83	3,020
Area 6:		5.27 (1.0527)		
—6 hr. period	622.93		32.84	656
—Docking or undocking	591.72		31.20	623
Area 7 between any point on or in:		4.73 (1.0473)		
—Gros Cap & De Tour	2,442.98		115.57	2,559
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	2,442.98		115.57	2,559
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	920.03		43.52	964
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	2,047.67		96.87	2,145
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	920.03		43.52	964
—Sault Ste. Marie, MI & De Tour	2,047.67		96.87	2,145
—Sault Ste. Marie, MI & Gros Cap	920.03		43.52	964
—Harbor movage	920.03		43.52	964
Area 8:		5.17 (1.0517)		
—6 hr. period	549.44		28.42	578
—Docking or undocking	522.20		27.02	549

*Rates for "Cancellation, delay or interruption in rendering services (§ 401.420)" and "Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)" are not reflected in this table but have been increased by 5.07% across all areas.

VI. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rulemaking is not significant under Executive Order 12866 and has not been reviewed by OMB.

Public comments on the NPRM are summarized in Part IV of this publication. We received no public comments that would alter our assessment of the impacts discussed in the NPRM. We have adopted the

assessment in the NPRM as final. See the "*Regulatory Analyses*" section of the NPRM for more details. A summary of the assessment follows.

This final rule would implement a 5.07 percent overall rate adjustment for the Great Lakes system over the current rate as adjusted in the 2009 final rule. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation and changes in association expenses to maintain these compensation levels.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this final rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

We used 2006–2008 vessel arrival data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 208 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 208 vessels, there were approximately 923 annual U.S. port arrivals before the vessels left the Great Lakes system.

The impact of the rate adjustment to shippers is estimated from the district pilotage revenues. These revenues represent the direct and indirect costs ("economic costs") that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact of the rate adjustment in this final rule to be the difference between the total projected revenue needed to cover costs based on the 2009 rate adjustment and the total projected revenue needed to cover costs in this final rule for 2010. Table 20 details additional costs by area and district.

TABLE 20—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF FINAL RULE

[$U.S.; non-discounted] [1]

	Total projected expenses in 2009	Proposed rate change	Total projected expenses in 2010 [2]	Additional revenue or cost of this rulemaking [3]
Area 1	$2,166,873	1.0465	$2,267,537	$100,664
Area 2	1,545,503	1.0533	1,627,853	82,350
Total, District One	3,712,376		3,895,390	183,014
Area 4	1,312,463	1.0547	1,384,253	71,791
Area 5	2,438,725	1.0496	2,559,805	121,080
Total, District Two	3,751,188		3,944,058	192,870
Area 6	2,417,474	1.0527	2,544,935	127,461
Area 7	1,489,052	1.0473	1,559,501	70,449
Area 8	2,035,052	1.0517	2,140,345	105,293
Total, District Three	5,941,578		6,244,781	303,203
All Districts	13,405,142		14,084,230	679,088

[1] Some values may not total due to rounding.
[2] Rate changes are calculated for areas only. District totals reflect arithmetic totals and are for informational and discussion purposes. See discussion in final rule for further details.
[3] Additional Revenue or Cost of this Rulemaking = 'Total Projected Expenses in 2010'—'Total Projected Expenses in 2009'.

After applying the rate change in this final rule, the resulting difference between the projected revenue in 2009 and the projected revenue in 2010 is the annual impact to shippers from this final rule. This figure will be equivalent to the total additional payments that shippers will incur for pilotage services from this rule.

The impact of the rate adjustment in this final rule to shippers varies by area and district. The annual non-discounted costs of the rate adjustments in Districts 1, 2 and 3 would be approximately $183,000 and $193,000, and $303,000. To calculate an exact cost per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this rule.

As Table 20 indicates, all areas will experience an increased annual cost due to this final rule. The overall impact of the final rule would be an additional cost to shippers of just over $679,000 across all three districts, due primarily to an increase in benchmark contractual wages and benefits and an inflation adjustment.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments that would alter our certification in the NPRM. We have found no additional data or information that would change our findings in the NPRM. We have adopted the certification in the NPRM for this final rule. See the "Small Entity" section of the NPRM for additional details. A summary of the NPRM analysis follows.

We found entities affected by the rule to be classified under the North American Industry Classification System (NAICS) code subsector 483–Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111–Deep Sea Freight Transportation, 483113–Coastal and Great Lakes Freight Transportation, and 483211–Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

We reviewed company size and ownership data from 2006–2008 Coast Guard MISLE data and business revenue and size data provided by Reference USA and Dun and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: Approximately 65 total employees combined. We expect no adverse impact to these entities from this final rule since all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard has determined that this final rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b).

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the final rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This final rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$17.73 per kilometer or $31.38 per mile [1]
Each Lock Transited	393 [1]
Harbor Movage	1287 [1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $858, and the maximum basic rate for a through trip is $3,767.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$861
Docking or Undocking	821

* * * * *

■ 3. In § 401.407, revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$762	$762
Docking or Undocking	587	587
Any Point on the Niagara River below the Black Rock Lock	N/A	1,498

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any Point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,308	$1,364	$2,997	$2,308	N/A
Port Huron Change Point	[1] 4,020	[1] 4,657	3,020	2,349	1,670
St. Clair River	[1] 4,020	N/A	3,020	3,020	1,364
Detroit or Windsor or the Detroit River	2,308	2,997	1,364	N/A	3,020
Detroit Pilot Boat	1,670	2,308	N/A	N/A	3,020

[1] When pilots are not changed at the Detroit Pilot Boat.

* * * * *

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$656
Docking or Undocking	623

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any harbor
Gros Cap	$2,559	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	2,559	$964	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,145	964	N/A
Sault Ste. Marie, MI	2,145	964	N/A
Harbor Movage	N/A	N/A	$964

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$578
Docking or Undocking	549

* * * * *

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the number "$113" and add, in its place, the number "$119"; and remove the number "$1,777" and add, in its place, the number "$1,867".

■ b. In paragraph (b), remove the number "$113" and add, in its place, the number "$119"; and remove the number "$1,777" and add, in its place, the number "$1,867".

■ c. In paragraph (c)(1), remove the number "$671" and add, in its place, the number "$705"; in paragraph (c)(3), remove the number "$113" and add, in its place, the number "$119"; and, also in paragraph (c)(3), remove the number "$1,777" and add, in its place, the number "$1,867".

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number "$684" and add, in its place, the number "$719".

Dated: February 4, 2010.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–3396 Filed 2–19–10; 11:15 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2, and 23

[IB Docket No. 05–216; FCC 10–7]

Elimination of the Commission's Rules Governing International Fixed Public Radiocommunication Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) adopts the proposal in the Notice of Proposed Rulemaking in this proceeding, to eliminate that portion of the Commission's rules governing International Fixed Public Radiocommunication Services (IFPRS). The elimination of these rules is to facilitate coordination of facilities and services in the C-band (3700–4200 MHz and 5926–6425 MHz).

DATES: Effective March 25, 2010.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth (202) 418–1539, International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in IB Docket 05–216, adopted January 6, 2010, and released January 14, 2010. The full text of the *Report and Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20054. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Paperwork Reduction Act Analysis: The actions taken in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520), and found to impose no new or modified requirements.

Regulatory Flexibility Analysis Certification:

The Regulatory Flexibility Act of 1980, as amended, 5 USC 601 *et seq.,* (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

In the *Report and Order,* the Commission decides to eliminate the part 23 rules applicable to International Fixed Public Radio Service (IFPRS) licensees, because there are no IFPRS licensees in operation. Therefore, we certify that the actions in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order,* including a copy of this certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 USC 801(a)(1)(A). In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register.** *See* 5 USC 605(b).

Summary of Report and Order

In the *Report and Order,* the Commission observed that there are no licensees currently offering IFPRS, and there is no basis in the record for assuming that anyone will apply for a license to operate facilities to provide this service in the future. Accordingly, the Commission found that there is no need for part 23, and removed it from the Commission's rules. In addition, the Commission found that issues related to the regulation of IFPRS and the transition from part 23 to part 101 raised in the Notice of Proposed Rulemaking in this proceeding, 70 FR 56620 (Sept. 20, 2005), are moot. Finally, the Commission eliminated the allocations for IFPRS in the Table of Frequency Allocations, 47 CFR 2.106, in order to simplify the planning and coordination of facilities in services that have a co-primary allocation in the C-band.

Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this *Report and Order* in IB Docket No. 05–216 is hereby *adopted.*

It is further ordered that parts 0, 2, and 23 of the Commission's rules *are amended* as set forth in the Appendix to this Order. An announcement of the effective date of these rule revisions will be published in the **Federal Register.**

It is further ordered that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 2

Telecommunications.

47 CFR Part 23

Communications common carriers, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, and under the authority of 47 U.S.C. 154(i), 303(r), the Federal Communications Commission amends 47 CFR chapter I as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

■ 2. Section 0.261 is amended by revising paragraph (a)(3) to read as follows:

§ 0.261 Authority delegated.

(a) * * *

(3) To act upon applications for international telecommunications and services pursuant to relevant portions of part 63 of this chapter, and coordinate with the Wireline Competition Bureau as appropriate;

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Pages 38 and 41 are revised.

■ b. In the list of Non-Federal Government (NG) Footnotes, footnote NG41 is removed.

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

3300-3400 RADIOLOCATION 5.149 5.429 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.430	3300-3400 RADIOLOCATION Amateur 5.149 5.429	3300-3500 RADIOLOCATION US108 G2 US342	3300-3500 Amateur Radiolocation US108 5.282 US342	Private Land Mobile (90) Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation 5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433 5.282 5.432				
	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433		3500-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3500-3600 Radiolocation 3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation	Private Land Mobile (90)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile			3650-3700 US348 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US348 US349	Satellite Communications (25) Private Land Mobile (90)
	5.435				
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG180	Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.442 Radio astronomy 5.149 5.339 5.443			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
			4940-4990 5.339 US311 US342 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US311 US342	Private Land Mobile (90)

Table of Frequency Allocations — 5925-8025 MHz (SHF) — Page 41

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE			5925-6425	5925-6425 FIXED FIXED-SATELLITE (Earth-to-space) NG181	Satellite Communications (25) Fixed Microwave (101)
			6425-6525	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
			5.440 5.458	5.440 5.458	
			6525-6700	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space)	Fixed Microwave (101)
5.149 5.440 5.458			5.458 US342	5.458 US342	
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE			6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441	Satellite Communications (25) Fixed Microwave (101)
				5.458 5.458A 5.458B	
				6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
				5.458 5.458A 5.458B	
				7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171	TV Broadcast Auxiliary (74F) Cable TV Relay (78)
5.458 5.458A 5.458B 5.458C				5.458 5.458A 5.458B	
7075-7145 FIXED MOBILE				7075-7125 FIXED NG118 MOBILE NG171	
			5.458	5.458	
			7125-7145 FIXED	7125-7190	
5.458 5.459			5.458 G116		
7145-7235 FIXED MOBILE SPACE RESEARCH (Earth-to-space) 5.460			7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262		
			5.458 G116	5.458 US262	
			7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133	7190-7235	
5.458 5.459			5.458	5.458	

* * * * *

PART 23—[REMOVED]

■ 5. In Title 47, remove part 23.

[FR Doc. 2010–3262 Filed 2–22–10; 8:45 am]

BILLING CODE 6712–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10; FCC 09–63]

Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final Rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements associated with Sections 25.221(b)(1)(i) through (iii), 25.222(b)(1)(i) through (iii), 25.221(b)(1)(iv)(A), (B), 25.222(b)(1)(iv)(A), (B), 25.221(b)(2)(i) through (v), 25.222(b)(2)(i) through (v), 25.221(b)(4) and 25.222(b)(4) of the Commission's rules, and that these rules will take effect as of the date of this notice. On September 15, 2009, the Commission published the summary document of the Order on Reconsideration, In the Matter of Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz, IB Docket No. 02–10, FCC 09–63, at 74 FR 47100. This published item stated that the Commission will publish a notice in the Federal Register announcing when OMB approval for the rule sections which contain information collection requirements has been received and when the revised rules will take effect. This notice is consistent with the statement in the published summary document of the Order on Reconsideration.

DATES: Section 25.221(b)(1)(i) through (iii), 25.222(b)(1)(i) through (iii), 25.221(b)(1)(iv)(A), (B), 25.222(b)(1)(iv)(A), (B), 25.221(b)(2)(i) through (v), 25.222(b)(2)(i) through (v), 25.221(b)(4) and 25.222(b)(4) published at 74 FR 47100 on September 15, 2009 are effective on February 23, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Balatan or Howard Griboff, Policy Division, International Bureau, FCC, (202) 418–1460 or via the Internet at: Jennifer.Balatan@fcc.gov or Howard.Griboff@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on December 1, 2009, OMB approved, for a period of three years, the information collection requirements contained in Sections 25.221(b)(1)(i) through (iii), 25.222(b)(1)(i) through (iii), 25.221(b)(1)(iv)(A), (B), 25.222(b)(1)(iv)(A), (B), 25.221(b)(2)(i) through (v), 25.222(b)(2)(i) through (v), 25.221(b)(4) and 25.222(b)(4) of the Commission's rules. The Commission publishes this notice to announce the effective date of these rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include OMB Control Number 3060–1061 in your correspondence. The Commission also will accept your comments via the Internet if you send them to PRA@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e–mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202)418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on December 1, 2009, for the information collection requirements contained in the Commission's rules at 47 CFR Sections 25.221(b)(1)(i) through (iii), 25.222(b)(1)(i) through (iii), 25.221(b)(1)(iv)(A), (B), 25.222(b)(1)(iv)(A), (B), 25.221(b)(2)(i) through (v), 25.222(b)(2)(i) through (v), 25.221(b)(4) and 25.222(b)(4).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The OMB Control Number is 3060–1061 and the total annual reporting burdens and costs for respondents are as follows:

OMB Control No.: 3060–1061.

OMB Approval Date: December 1, 2009.

Expiration Date: December 31, 2012.

Title: Earth Stations on Board Vessels (ESV).

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: Estimated time is different for each response – the response with the shortest duration takes an estimated 0.25 hours to complete and the response with the longest duration takes an estimated 24 hours to complete.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory approval for the information collection requirements under Sections 4(i), 7(a), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 264 hours.

Total Annual Cost: $149,925.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On July 31, 2009, the Federal Communications Commission ("Commission") released an Order on Reconsideration titled, "In the Matter of the Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/ 3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands" (FCC 09–63, IB Docket No. 02–10 ("ESV Reconsideration Order"). In the ESV Reconsideration Order, the Commission resolved various concerns raised regarding the operational restrictions placed on ESVs that are designed to protect the fixed–satellite service (FSS), operating in the C–band and Ku–band, and the terrestrially–based fixed service (FS), operating in the C–band, from harmful interference. The Commission adopted rule changes that should provide ESV operators with greater operational flexibility while continuing to ensure that the other services in these bands are protected from harmful interference.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S.

Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–3381 Filed 2–22–10; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XU51

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2010 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 19, 2010, through 1200 hrs, A.l.t., September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2010 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA is 11,213 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2010) and inseason adjustment (74 FR 68713, December 29, 2010).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allocation of the 2010 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,013 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 17, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 18, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–3568 Filed 2–18–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XU52

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for American Fisheries Act Catcher-Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher-processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2010 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher-processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 18, 2010, through 1200 hrs, A.l.t., April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by

U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 Pacific cod TAC allocated to AFA trawl catcher-processors in the BSAI is 2,600 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and inseason adjustment (74 FR 68717, December 29, 2009).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2010 Pacific cod TAC allocated to AFA trawl catcher-processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher-processors in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher-processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 17, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 18, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–3569 Filed 2–18–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 35
Tuesday, February 23, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0137]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Transportation Security Administration–023 Workplace Violence Prevention Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security Transportation Security Administration–023 Workplace Violence Prevention Program System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before March 25, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0137, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Peter Pietra (*tsaprivacy@dhs.gov*), Director, Privacy Policy & Compliance, TSA–036, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6036. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) Transportation Security Administration (TSA) is establishing a new system of records under the Privacy Act (5 U.S.C. 552a) titled, DHS/TSA–023 Workplace Violence Prevention Program System of Records. The system will cover records regarding current and former employees and contractors of TSA and members of the public who have been involved in workplace violence at TSA facilities, or while on or because of their official duty, or who are being or have been assisted or counseled by the TSA Workplace Violence Prevention Program. Records include acts, remarks, or gestures that communicate a threat of harm or otherwise cause concern for the safety of any individual at TSA facilities or while on or because of their official duty. These records may include identifying information, information documenting workplace violence, and actions taken by the Workplace Violence Prevention Program or TSA. The program provides oversight and management of potential or actual incidents of violence in the workplace. It provides assistance to affected individuals, guidance on prevention and response to workplace violence, analyzes data as needed, and provides training.

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/TSA–023 Workplace Violence Prevention Program System of Records. Some information in DHS/TSA–023 Workplace Violence Prevention Program System of Records relates to official DHS law enforcement. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national

security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records titled, DHS/TSA–023 Workplace Violence Prevention Program System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph "48":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

48. The DHS/TSA–023 Workplace Violence Prevention Program System of Records consists of electronic and paper records and will be used by the Transportation Security Administration. The DHS/TSA–023 Workplace Violence Prevention Program System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under. The DHS/TSA–023 Workplace Violence Prevention Program System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted portions of this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3); (d); (e)(1), (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: February 1, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–3360 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0096]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–027 The History of the Department of Homeland Security System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security/ALL–027 The History of the Department of Homeland Security System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before March 25, 2010.

ADDRESSES: You may submit comments, identified by docket number [DHS–2009–0096], by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Historian (202–282–8682), History Office, Office of Policy, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: The Department of Homeland Security (DHS) and its components and offices rely on the Privacy Act system of records notice, DHS–2004–0004 Oral History Program: The History of the Department of Homeland Security System of Records (69 FR 56781, September 22, 2004) for the collection and maintenance of records that concern the Department's history records. The system name is being changed to DHS/ALL–027 The History of the Department of Homeland Security System of Records.

As part of its efforts to maintain its Privacy Act records systems, DHS is updating and reissuing a Department-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS history records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling history records. The collection and maintenance of this information will assist DHS in managing the Department's history records.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for the DHS/ALL–027 The History of the Department of Homeland Security System of Records. Some information in this system of records relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18, investigatory records related to suitability and federal service exams and test materials. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

It is necessary for these records to be exempt because, if public, could disclose training and protection methods used to protect the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. While these records are maintained for historical purposes, they must remain exempt from the Privacy Act.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/ALL–027 The History of the Department of Homeland Security System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph "47":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

47. The DHS/ALL–027 The History of the Department of Homeland Security System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL–027 The History of the Department of Homeland Security System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL–027 The History of the Department of Homeland Security System of Records contain information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (I) and (f) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) and thus would not require DHS to apply rules for records or portions of records which are exempted from access or amendment upon request. Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained under procedures described in the related system of records notice (SORN) or Subpart B of this Part.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: January 21, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–3361 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AO–FV–08–0174; AMS–FV–08–0085; FV08–920–3]

Kiwifruit Grown in California; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Order No. 920

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on proposals by the Kiwifruit Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would redefine the districts into which the production area is divided and reallocate committee membership among the districts, revise committee nomination and selection procedures, authorize the committee to conduct research and promotion programs, and revise committee meeting and voting procedures. The proposals are intended to improve the operation and administration of the order and provide the industry with additional tools for the marketing of kiwifruit.

DATES: The referendum will be conducted from March 12 through March 26, 2010. The representative period for the purpose of the referendum is August 1, 2008, through July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Laurel May or Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov* or *Kathy.Finn@ams.usda.gov.*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 24, 2008, and published in the November 19, 2008, issue of the **Federal Register** (73 FR 69588), and a Recommended Decision issued on November 5, 2009, and published in the November 12, 2009, issue of the **Federal Register** (74 FR 58216).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments are based on the record of a public hearing held December 9, 2008, in Modesto, California, to consider such amendments to the order. Notice of this hearing was published in the **Federal Register** on November 19, 2008 (73 FR 69588). The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The notice of hearing contained four proposals submitted by the committee.

The amendments included in this decision would:

1. Redefine the districts into which the production area is divided and reallocate committee membership positions among the districts;

2. Revise committee nomination and selection procedures;

3. Add authority for research and promotion programs; and

4. Revise the committee's meeting and voting procedures.

The Agricultural Marketing Service (AMS) also proposed to make any such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the

effectuated amendments. AMS proposed making a clarifying conforming change to the order language in § 920.20 that cross references § 920.31(l).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 5, 2009, filed with the Hearing Clerk, U.S. Department of Agriculture (USDA), a Recommended Decision and Opportunity to File Written Exceptions thereto by December 14, 2009. None were filed.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural growers have been defined as those with annual receipts of less than $750,000.

There are approximately 30 handlers of kiwifruit subject to regulation under the order and approximately 220 growers of kiwifruit in the regulated area. Information provided at the hearing indicates that the majority of the handlers would be considered small agricultural service firms. Hearing testimony also suggests that the majority of growers would be considered small entities according to the SBA's definition.

The order regulates the handling of kiwifruit grown in the State of California. Total bearing kiwifruit acreage has declined from a peak of approximately 7,300 acres in 1992–93 to about 4,000 acres in 2007–08. Approximately 24,500 tons of kiwifruit were produced in California during the 2007–08 season—a decline of approximately 27,800 tons compared to the 1992–93 season. According to evidence provided at the hearing, approximately 30 percent of the 2007–08 California kiwifruit crop was shipped to export markets, including Canada, Mexico, Central American, and Asian destinations.

Under the order, outgoing grade, size, pack, and container regulations are established for kiwifruit shipments, and shipping and inventory information is collected. Program activities administered by the committee are designed to support large and small kiwifruit growers and handlers. The 12-member committee is comprised of eleven grower representatives from the production area, as well as a public member. Committee meetings in which regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

Following several discussions within the kiwifruit industry, the committee considered adding authority to conduct research and promotion programs to provide maximum flexibility to the order. An amendment subcommittee was appointed to develop recommendations for this and other possible order revisions. The subcommittee developed a list of proposed amendments to the order, which was then presented to the committee.

The committee met to review and discuss the subcommittee's proposals at its meetings on January 30, 2008, April 22, 2008, and July 9, 2008. At those meetings, the committee voted unanimously to support the four proposed amendments that were forwarded to AMS and subsequently considered at the hearing.

The proposed amendments are intended to provide the committee and the industry with additional flexibility in administering the order and producing and marketing California kiwifruit. Record evidence indicates that the proposals are intended to benefit all growers and handlers under the order, regardless of size.

All grower and handler witnesses supported the proposed amendments at the hearing. Several witnesses commented on the implications of implementing research and promotion programs under the order. In that context, witnesses stated that they expected the benefits to growers and handlers to outweigh any potential costs.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

Proposal 1—Districts and Representation

Proposal 1 would amend the order by redefining the districts into which the production area is divided and providing for the allocation of committee membership positions between the districts. Such allocation would be based upon five-year production averages, or upon another basis approved by the Secretary. This proposal would also provide for concurrent terms of office for all committee members, who would be selected biannually.

At the time the order was promulgated, kiwifruit acreage was more widespread throughout California and there were many more growers involved in kiwifruit production. The order originally provided for eight grower districts within the production area, with one membership seat apportioned to each district, and an additional seat reallocated annually to each of the three districts with the highest production in the preceding year. The structure was designed to afford equitable representation for all districts on the committee.

The concentration of planted acreage into two main regions and the decline in the number of growers over time has prompted the committee to evaluate the appropriateness of the current committee structure. The committee believes that consolidating the districts and providing for reallocation of grower seats as proposed would better reflect the current composition of the industry. The revisions would ensure that the interests of all large and small entities are represented appropriately during committee deliberations. Synchronizing all the terms of office to begin and end at the same time would simplify administration of the order and reduce disruptions to committee business. Adoption of the proposed amendment would have no economic impact on growers or handlers of any size.

Proposal 2—Nominations and Vacancies

Proposal 2 would amend the order by specifying that grower nomination meetings be held by June 1 of each nomination year and that mid-term vacancies may be filled by selections made by the Secretary after consideration of recommendations that may be submitted by the committee, unless such selection is deemed unnecessary by the Secretary.

Currently, the order requires that nomination meetings be held by July 15 of each year, but that deadline does not allow for timely processing of the

nominations and selections of new members prior to the August 1 beginning of the terms of office. The committee has been conducting nomination meetings earlier than prescribed by the order and proposed this revision to codify what has become normal practice.

Any vacancies that occur under the current order provisions must be filled by repeating the nomination and selection process outlined for new members. Allowing the Secretary to fill vacancies as proposed would streamline the process of filling vacancies and reduce disruption to committee business.

Adoption of this proposal would have no economic impact upon growers or handlers of any size.

Proposal 3—Research and Promotion

Proposal 3 would amend the order by adding authority for the committee to conduct research and promotion projects and to accept voluntary contributions to assist with funding those projects. This proposal would also amend the order by requiring the concurring vote of eight members for any action with respect to research and promotion. Currently, the committee is not authorized to conduct research or promotion programs, and it is not authorized to accept voluntary contributions for any purpose.

Historically, kiwifruit research has been conducted by other industry organizations and funded through private as well as public revenues. Currently, the California Kiwifruit Commission, a State marketing program, is authorized to conduct research and promotion projects for the industry. According to the hearing record, the committee has not identified any specific projects that it wants to conduct at this time, nor does it intend to duplicate the efforts of the State program. However, it would like to add authority to conduct such projects in the event that a need for new projects arises.

Further, the committee proposed adding authority to accept voluntary funds to conduct research and promotion projects to augment the assessment revenues they might budget for such purposes. The order specifies a cap on the rate handlers may be assessed to support the committee's programs and activities. According to witnesses, the current assessment rate is well below the established cap, but supporting research and promotion projects in the future could require more money than what the shrinking industry is likely to collect through assessments. Voluntary contributions could also augment matching funds required from the committee for participation in USDA-sponsored market development programs.

Finally, the committee recommended adding a provision that all actions with respect to research and promotion would require eight concurring committee votes. Witnesses explained that this supermajority approval would ensure that research and promotion projects undertaken by the committee would benefit the industry as a whole.

Adding authority to conduct research and promotion projects would not, of itself, have any economic impact on growers or handlers of any size. If research and promotion projects were implemented under this authority in the future, the assessment rate for handlers would likely increase to cover the cost of those expenditures. The value of any proposed projects, as well as recommendations for increased assessment rates, would be evaluated by the committee and approval would require the concurring vote of eight members. Any increases in cost would be borne proportionately by handlers according to the volume of kiwifruit they ship. Those costs could be offset by voluntary contributions. Witnesses testified that any increases in cost due to implementation of this proposal would be offset by benefits expected to accrue to growers and handlers as improved production and post-harvest handling methods and new market opportunities are developed. Any increased costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

Proposal 4—Meeting and Voting Procedures

Proposal 4 would amend the order by allowing the committee to designate substitute alternates to represent absent members from the same district at meetings if necessary to secure a quorum. Currently, under most circumstances, only a member's respective alternate may represent the member if the member is unable to attend a meeting. For districts with only one member, there is no provision for when both the member and his or her alternate are unavailable for a meeting. In the past, meetings have been cancelled at the last minute because attendance was insufficient to meet quorum requirements.

If implemented, the proposed amendment would allow alternates not otherwise representing absent members to represent other members at committee meetings in order to secure a quorum. This would help ensure that quorum requirements could be met and that committee business could be addressed in a timely manner.

This proposal would further authorize the committee to meet by telephone or other means of communication. Video conference meetings would be considered assembled meetings and votes taken at such meetings would be considered in-person. Votes by telephone or other types of non-assembled meetings would be by roll call.

Witnesses testified that this amendment would provide the committee with greater flexibility in scheduling meetings and would be consistent with current practices in other kiwi industry settings. The use of telephone and other means of communication would allow greater access to committee meetings for members as well as other interested persons. Additionally, administration of the order would be improved as urgent committee business could be addressed in a timely manner.

This amendment is expected to benefit growers and handlers of all sizes by improving committee efficiencies and encouraging greater participation in industry deliberations. The amendment is not expected to result in any significant increased costs to producers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence indicates that the proposed amendments are intended to benefit all producers and handlers under the order, regardless of size. Furthermore, the record shows that the costs associated with implementing regulations would be outweighed by the benefits expected to accrue to the California kiwifruit industry.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the production and marketing of California kiwifruit.

Paperwork Reduction Act

Current information collection requirements for part 920 are approved by the Office of Management and Budget (OMB), under OMB Number 0581–0189—"Generic OMB Fruit Crops." No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Justice Reform

The amendments to Marketing Order No. 920 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 12, 2009, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Kiwifruit Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400–407) to determine whether the annexed order amending the order regulating the handling of kiwifruit grown in California is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of kiwifruit in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2008, through July 31, 2009.

The agents of the Secretary to conduct such referendum are hereby designated to be Kurt Kimmel and Debbie Wray, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Kurt.Kimmel@ams.usda.gov* or *Debbie.Wray@ams.usda.gov,* respectively.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

Dated: February 17, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Kiwifruit Grown in California [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–612), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of kiwifruit grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 920.12 to read as follows:

§ 920.12 District.

District means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) *District 1* shall include Butte, Sutter, and Yuba Counties.

(b) *District 2* shall include Tulare County.

(c) *District 3* shall include all counties within the production area not included in Districts 1 and 2.

3. Revise § 920.20 to read as follows:

§ 920.20 Establishment and Membership

There is hereby established a Kiwifruit Administrative Committee

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate), and eleven members (and alternates). With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers. In accordance with § 920.31(l), district representation on the committee shall be based upon the previous five-year average production in the district and shall be established so as to provide an equitable relationship between membership and districts. The committee may, with the approval of the Secretary, provide such other allocation of membership as may be necessary to assure equitable representation.

4. Revise § 920.21 to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. *Provided,* That the terms of office of all members and alternates currently serving will end on the last day of the fiscal period in which this amended provision becomes effective, with nominations for new terms of office to be conducted as soon as practicable after the effective date of the amendment. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members. *Provided,* That any term of office less than two years as a result of the amendment will not count toward tenure.

5. In § 920.22, revise the first sentence of paragraph (a) to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than June 1 of each year in which nominations are made, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. * * *

* * * * *

6. Revise § 920.26 to read as follows:

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be selected by the Secretary after consideration of recommendations which may be submitted by the committee, unless such selection is deemed unnecessary by the Secretary. The selection shall be made on the basis of representation provided for in § 920.20.

7. Revise § 920.27 to read as follows:

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate any other alternate member from the same district to serve in such member's place and stead if necessary to secure a quorum. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

8. Revise § 920.32 to read as follows:

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum, and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, research and promotion activities, or recommendations for regulations pursuant to §§ 920.50 through 920.55 of this part shall require at least eight concurring votes.

(b) Committee meetings may be assembled or held by telephone, video conference, or other means of communication. The committee may vote by telephone, facsimile, or other means of communication. Votes by members or alternates present at assembled meetings shall be cast in person. Votes by members or alternates participating by telephone or other means of communication shall be by roll call; *Provided,* That a video conference shall be considered an assembled meeting, and votes by those participating through video conference shall be considered as cast in person.

9. Add a new § 920.45 to read as follows:

§ 920.45 Contributions.

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

10. Add a new § 920.47 to read as follows:

§ 920.47 Production research, marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of kiwifruit. The expense of such projects shall be paid from funds collected pursuant to §§ 920.41 and 920.45.

[FR Doc. 2010–3477 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–FV–09–0021; FV–09–704]

Blueberry Promotion, Research, and Information Order; Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws a proposed rule published in the **Federal Register** on July 27, 2009 (74 FR 36955), to amend the Blueberry Promotion, Research, and Information Order (Order) by increasing the assessment rate on producers and importers who produce or import more than 2,000 pounds of highbush blueberries annually from $12 to $24 per ton. The Order is administered by the U.S. Highbush Blueberry Council (Council). Assessments are used by the Council to fund a nationally coordinated program of research, development, advertising, and promotion of highbush blueberries in the marketplace. The Council recommended increasing the assessment rate to expand its promotional and

research activities to bridge the potential gap between demand and future supply. Several comments were received in opposition to the proposed increase in assessment rate. Accordingly, based upon comments received, the proposed rule is being withdrawn.

DATES: The proposed rule published on July 27, 2009 (74 FR 36955) is withdrawn as of February 23, 2010.

FOR FURTHER INFORMATION CONTACT: Sonia Jimenez, Chief, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: *Sonia.Jimenez@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Blueberry Promotion, Research, and Information Order [7 CFR part 1218]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425].

This action withdraws a proposed rule published in the **Federal Register** on July 27, 2009 (74 FR 36955), to amend the Order by increasing the assessment rate on producers and importers who produce or import more than 2,000 pounds of highbush blueberries annually from $12 to $24 per ton. The Council recommended this action to expand its promotional activities and add an advertising component to bridge the potential gap between highbush blueberry demand and future supply. Furthermore, it was the Council's intent to use the additional revenue to strengthen existing consumer, food service, and food manufacturer publicity; to expand its health research; and to develop an educational campaign on good management practices and food safety within the United States as well as internationally.

During the comment period, July 27 through September 25, 2009, the Department of Agriculture received 45 timely comments. These comments may be viewed on the Internet at *http://www.regulations.gov.* Nineteen comments were opposed to increasing the assessment rate at this time and one comment supported a smaller increase of $18 per ton.

In summary, the opposing commenters expressed concern with doubling the assessment rate in light of current, poor economic conditions. Several commenters also argued that there is no need to increase the assessment rate because revenue should increase with the anticipated increase in production. Others raised concerns about growers being able to cover their production costs if the assessment rate doubled. Given the comments received, AMS agrees that the proposed rule increasing the assessment rate from $12 to $24 per ton should not be finalized. Therefore, the proposed rule is being withdrawn so as to allow further consideration by the Council. The Council should reconsider whether an increase in the assessment rate is appropriate, and if so, at what rate it should recommend any increase.

The proposed rule to amend the Order by increasing the assessment rate on producers and importers who produce or import more than 2,000 pounds of highbush blueberries annually from $12 to $24 per ton published in the **Federal Register** on July 27, 2009 (74 FR 36955), is hereby withdrawn.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Dated: February 17, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–3478 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1218 and 1219

[Document Numbers AMS–FV–10–0006; AMS–FV–10–0007]

Blueberry and Hass Avocado Promotion, Research, and Information Orders; Section 610 Reviews

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reviews and request for comments.

SUMMARY: This document announces the Agricultural Marketing Service's (AMS) plans to review the Blueberry and Hass Avocado Promotion, Research, and Information Orders (Orders). Both reviews will be conducted under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments must be received by April 26, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Room 0632–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or it can be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov* regarding blueberries; or Maureen T. Pello, Marketing Specialist, Research and Promotion Branch, telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov* regarding avocados.

SUPPLEMENTARY INFORMATION: The Blueberry Promotion, Research and Information Order (Blueberry Order) (7 CFR part 1218) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425). The Hass Avocado Promotion, Research and Information Order (Avocado Order) (7 CFR part 1219) is authorized under the Hass Avocado Promotion, Research and Information Act of 2000 (Avocado Act) (7 U.S.C. 7801–7813).

The Blueberry Order became effective on August 16, 2000. The Order is administered by the U.S. Highbush Blueberry Council (Council) with oversight by the Department of Agriculture (USDA). The program is funded by assessments on highbush (cultivated) blueberries grown in and imported into the United States. Producers and importers pay the assessment. The producer assessment is remitted by first handlers, and the importer assessment is remitted by the U.S. Customs and Border Protection (Customs). Producers and importers who produce or import less than 2,000 pounds of highbush blueberries annually are exempt from the program. The purpose of the Order is to finance a coordinated program of promotion, research, and information to maintain and expand the market for fresh and processed cultivated blueberries in the United States and abroad.

The Council is composed of 14 members as follows: 10 producers (one from each of four regions and one from each of the top six producing States); 1 importer; 1 exporter from a foreign production area; 1 handler; and 1 public member. Each member has an alternate. The members and alternates are appointed to the Council by the Secretary of Agriculture and serve a term of 3 years.

The Avocado Order became effective on September 9, 2002. The Order is administered by the Hass Avocado Board (Board) with oversight by USDA. The program is funded by assessments on fresh domestic and imported Hass avocados. Producers and importers pay the assessment. The producer assessment is remitted by first handlers, and the importer assessment is remitted by Customs. Exports of domestic Hass avocados are exempt from assessments. The purpose of the program is to increase consumption of Hass avocados in the United States.

Under the Order, a state association of avocado producers receives 85 percent of the assessments paid by domestic producers, and certified importer associations receive 85 percent of the assessments paid by their members. The State and importer associations use these funds to conduct State-of-origin and country-of-origin promotions, respectively.

The Board is composed of 12 members, 7 who are producers and 5 who are importers. Each member has an alternate. The members and alternates are appointed to the Board by the Secretary of Agriculture and serve a term of 3 years.

AMS published in the **Federal Register** on March 24, 2006 (71 FR 14827), its plan to review certain regulations, including the Blueberry and Avocado Orders under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. According to the schedule published in 2006, this notice and request for comments is made for the Blueberry and Avocado Orders.

The purpose of the review is to determine whether the Orders should be continued without change, amended, or rescinded (consistent with the objectives of the 1996 Act and Avocado Act, respectively) to minimize the impacts on small entities. AMS will consider the following factors: (1) The continued need for the Orders; (2) the nature of complaints or comments received from the public concerning the Orders; (3) the complexity of the Orders; (4) the extent to which the Orders overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the Orders have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Orders.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Dated: February 17, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–3446 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2007–BT–STD–0010]

RIN 1904–AA89

Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners: Public Meeting and Availability of the Preliminary Technical Support Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U. S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of amending energy conservation standards for residential clothes dryers and room air conditioners; the analytical framework, models, and tools that DOE is using to evaluate standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encourages written comments on these subjects. To inform stakeholders and facilitate this process, DOE has prepared an agenda, a preliminary Technical Support Document (TSD), and briefing materials, which are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/clothes_dryers.html* and *http://www1.eere.energy.gov/buildings/appliance_standards/residential/room_ac.html.*

DATES: The Department will hold a public meeting on Tuesday, March 16, 2010, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., Tuesday, March 2, 2010. Written comments are welcome, especially following the public meeting, and should be submitted by April 26, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–098, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by docket number EERE–2007–BT–STD–0010, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: home_appliance2.rulemaking@ee.doe.gov.* Include EERE–2007–BT–STD–0010 and/or RIN 1904–AA89 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Residential Clothes Dryers and Room Air Conditioners, EERE–2007–BT–STD–0010 and/or RIN 1904–AA89, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m.

and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Stephen Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–7463. e-mail: *stephen.witkowski@ee.doe.gov.*

Francine Pinto or Betsy Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–7432. e-mail: *Francine.pinto@hq.doe.gov* or *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

Part A of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6291 *et seq.,* established an energy conservation program for major household appliances, which includes residential clothes dryers and room air conditioners. This program authorizes the Department to establish technologically feasible, economically justified energy efficiency standards for certain consumer products that would result in substantial national energy savings, and for which both natural market forces and voluntary labeling programs have been and/or are expected to be ineffective in promoting energy efficiency.

DOE must design each new or amended standard for these products to (1) achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;

3. The total projected amount of energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i).)

Prior to proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue; the results of preliminary analyses performed by DOE for the product; and potential energy conservation standard levels derived from these analyses that DOE could consider.

II. History of Standards Rulemaking for Residential Clothes Dryers and Room Air Conditioners

A. Background

The amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, established prescriptive energy conservation standards for residential clothes dryers and performance energy conservation standards for room air conditioners, as well as requirements for determining whether these standards should be amended. (42 U.S.C. 6295(c) and (g).)

i. Residential Clothes Dryers

EPCA, as amended by NAECA, requires gas clothes dryers not to be equipped with constant burning pilots and requires that DOE conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295 (g)(3) and (4)) DOE defines "electric clothes dryer" under EPCA as "a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation. The heat source is electricity and the drum and blower(s) are driven by an electric motor(s)." (Title 10 of the Code of Federal Regulations (CFR) 430.2) Gas clothes dryers have a similar definition, except the heat source is gas. On May 14, 1991, DOE published a final rule in the **Federal Register** (FR) establishing the first set of performance standards for residential clothes dryers; the new standards became effective on May 14, 1994. 56 FR 22250. DOE initiated a second standards rulemaking for residential clothes dryers by publishing an advance notice of proposed rulemaking (ANOPR) in the **Federal Register** on November 14, 1994. 59 FR 56423. Pursuant to the priority-setting process outlined in the July 15, 1996, *Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products* (61 FR 36974 (July 15, 1996) (*establishing* 10 CFR part 430, subpart C, appendix A); the "Process Rule"), however, DOE classified the standards rulemaking for residential clothes dryers as a low priority for its fiscal year 1998 priority-setting process. As a result, DOE suspended the standards rulemaking activities for them.

ii. Room Air Conditioners

NAECA established performance standards for room air conditioners that became effective on January 1, 1990, and directed DOE to conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295 (c)(1) and (2)) DOE defines "room air conditioner" under EPCA as a "consumer product, other than a 'packaged terminal air conditioner,' which is powered by a single phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating." (10 CFR 430.2) On March 4, 1994, DOE published in the **Federal Register** a notice of proposed rulemaking (NOPR) for several products, including room air conditioners. 59 FR 10464. As a result of the Process Rule, DOE suspended activities to finalize standards for room air conditioners. DOE subsequently resumed rulemaking activities related to room air conditioners, and, on

September 24, 1997, DOE published a final rule establishing an updated set of performance standards, with an effective date of October 1, 2000. 62 FR 50122.

iii. Consent Decree

Under the consolidated Consent Decree in *New York* v. *Bodman,* No. 05 Civ. 7807 (S.D.N.Y. filed Sept. 7, 2005) and *Natural Resources Defense Council* v. *Bodman,* No. 05 Civ. 7808 (S.D.N.Y. filed Sept. 7, 2005) DOE is required to publish a final rule amending energy conservation standards for residential clothes dryers and room air conditioners no later than June 30, 2011.

B. Current Rulemaking Process

To initiate the current rulemaking to consider energy conservation standards, the Department published on its Web site the Energy Conservation Standards Rulemaking Framework Document for Residential Clothes Dryers and Room Air Conditioners (the framework document) to explain the issues, analyses, and process that it anticipated using for the development of energy efficiency standards for these products. This document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/dryer_roomac_framework.pdf.* DOE also published a notice announcing the availability of the framework document and a public meeting to discuss the proposed analytical framework, and inviting written comments concerning the development of standards for residential clothes dryers and room air conditioners. 72 FR 57254 (October 9, 2007).

The focus of the public meeting, which was held on October 24, 2007, was to discuss the analyses and issues identified in various sections of the framework document. At the meeting, DOE described the different analyses it would conduct, the methods proposed for conducting them, and the relationships among the various analyses. Manufacturers, trade associations, environmental advocates, regulators, and other interested parties attended the meeting. Comments received since publication of the framework document have helped identify issues DOE needs to address in developing a proposed standard and provided information contributing to DOE's proposed resolution of these issues.

III. Summary of the Analyses Performed by DOE

For each of the residential clothes dryer and room air conditioner products currently under consideration, DOE conducted in-depth technical analyses in the following areas: (1) Engineering, (2) markups to determine product price, (3) energy-use characterization, (4) life-cycle cost (LCC) and payback period (PBP) analyses, and (5) national impact analysis (NIA). These analyses resulted in a preliminary TSD that presents the methodology and results of each of these analyses. The preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. The analyses are described in more detail below.

DOE also conducted several other analyses that either support the five major analyses or are preliminary analyses that will be expanded upon for the NOPR. These analyses include the market and technology assessment, the screening analysis, which contributes to the engineering analysis, and the shipments analysis, which contributes to the NIA. In addition to these analyses, DOE has completed preliminary work on the manufacturer impact analysis (MIA) and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR.

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of a product DOE is evaluating for amended energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline product refers to a model or models having features and technologies typically found in products currently offered for sale. The baseline model in each product class represents the characteristics of products in that class and, for products already subject to energy conservation standards, usually is a model that just meets the current standard. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Markups To Determine Product Prices

DOE derives consumer prices for products based on manufacturer costs, manufacturer markups, retailer markups, distributor markups, contractor markups, builder markups, and sales taxes. In deriving these markups, DOE has determined (1) The distribution channels for product sales; (2) the markup associated with each party in the distribution channels; and (3) the existence and magnitude of differences between markups for baseline products (baseline markups) and for more efficient products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the product markups at each step in the distribution channel. The overall incremental markup relates the change in the manufacturer sales price of higher efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. Chapter 6 of the preliminary TSD discusses the estimation of markups.

C. Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for the residential clothes dryers and room air conditioners, which DOE uses in the LCC and PBP analyses and the NIA. DOE developed energy consumption estimates for all of the product classes analyzed in the engineering analysis, as the basis for its energy use estimates. Chapter 7 of the preliminary TSD discusses the energy use characterization.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCCs of the products likely to be installed in the absence of standards. DOE determines LCCs by considering (1) Total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the products (energy use and maintenance); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient products through savings in the operating cost of the product. It is the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. Chapter 8 of the preliminary TSD discusses the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels. DOE calculated NES and NPV for each efficiency level as the difference between a base-case forecast (without new standards) and the standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. Chapter 10 of the preliminary TSD discusses the NIA.

DOE consulted with interested parties as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following review and input from the public. The final rule will contain the final analysis results.

The Department encourages those who wish to participate in the public meeting to obtain the preliminary TSD and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, the Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by April 26, 2010, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for residential clothes dryers and room air conditioners.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, the Department will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a NOPR. The NOPR will include proposed energy conservation standards for the products covered by this rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on February 12, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–3479 Filed 2–22–10; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 950 and 980

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1266 and 1272

RIN 2590–AA24

Use of Community Development Loans by Community Financial Institutions To Secure Advances; Secured Lending by Federal Home Loan Banks to Members and Their Affiliates; Transfer of Advances and New Business Activity Regulations

AGENCY: Federal Housing Finance Agency; Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: Section 1211 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) to expand the types of eligible collateral that community financial institution (CFI) members may pledge to secure Federal Home Loan Bank (Bank) advances to include secured loans for community development activities and to allow Banks to make long-term advances to CFI members for purposes of financing community development activities. Section 1211 further provides that the Federal Housing Finance Agency (FHFA) shall define the term "community development activities" by regulation. Consequently, FHFA is proposing to amend the advances regulations to allow CFI members to pledge secured loans for community development activities as eligible collateral for advances, to provide that CFI members may use long term advances to fund community development activities and to define "community development," "community development loan," and other related terms necessary to implement these provisions. The proposal would also transfer the advances and new business activities regulations from the Federal Housing Finance Board (FHFB) regulations to the FHFA regulations, and make other conforming amendments. Finally, the proposed rule would also make a change to the advances regulation which would incorporate a long-standing policy previously established by the FHFB that any form of secured lending by a Bank to a member of the Federal Home Loan Bank System (Bank System) is deemed to be an advance. The proposed rule would extend that policy to cover secured lending transactions by a Bank to affiliates of members.

DATES: Written comments must be received on or before April 26, 2010. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA24, by one of the following methods:

- *U.S. Mail, United Postal Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA24, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA24, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA24" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure

timely receipt by FHFA. Please include "RIN 2590–AA24" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Thomas E. Joseph, Senior Attorney Advisor, Office of General Counsel, *thomas.joseph@fhfa.gov,* (202) 414–3095, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552; Louis Scalza, Associate Director, Policy and Program Development, *louis.scalza@fhfa.gov,* (202) 408–2953; or Julie Paller, Senior Financial Analyst, *julie.paller@fhfa.gov* (202) 408–2842, (not toll-free numbers), Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on this proposed rule, and will consider all comments before adopting final amendments to its regulations. Copies of all comments will be posted on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, Division A of HERA, Public Law No. 110–289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal government. HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the Banks, and the Bank System's Office of Finance, from the Office of Federal Housing Enterprise Oversight (OFHEO) and the FHFB to FHFA. HERA provided for the abolishment of OFHEO and FHFB one year after the date of enactment. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including being capitalized adequately, and that they carry out their public policy missions, including fostering liquid, efficient, competitive, and resilient national housing finance markets. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and FHFB until FHFA issues its own regulations.[1]

B. Statutory and Regulatory Background

Each Bank is a cooperative institution that is owned by its members. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424, 1426; 12 CFR part 925. Only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

Prior to HERA, CFIs were defined under the Bank Act as depository institutions insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) with average total assets of less than $500 million, as adjusted annually for inflation thereafter. 12 U.S.C. 1422(13) (2008). Section 1211 of HERA raised the $500 million average total assets cap to $1 billion. *See* section 1211 Public Law 110–289, 122 Stat. 2790 (amending 12 U.S.C. 1422(10)).

By Notice published in the **Federal Register** in February 2009, FHFA adjusted the $1 billion figure for inflation to $1.011 billion. *See* 74 FR 7438 (Feb. 17, 2009). As part of FHFA's separate rulemaking addressing Bank membership for community development financial institutions, FHFA included a technical amendment to the definition of "CFI" in existing § 925.1 of the FHFB regulations to implement the average total asset cap increase to $1 billion made by HERA.[2]

Under the Bank Act, any member, including a CFI, that wishes to borrow from its Bank must pledge certain types of collateral to secure its repayment obligation on advances, and must otherwise demonstrate to the Bank that it is creditworthy. *See* 12 U.S.C. 1430(a). Each Bank sets its own lending and collateral policies, which may vary from Bank to Bank and will apply to all borrowing members of that Bank. Prior to HERA, section 10(a)(3) of the Bank Act specified that a member may pledge the following types of collateral to secure an advance: (i) Fully disbursed, whole first mortgages on improved residential property not more than 90 days delinquent, or securities representing a whole interest in such mortgages; (ii) securities issued, insured or guaranteed by the U.S. Government or any agency thereof; (iii) cash or deposits of a Bank; (iv) other real estate-related collateral acceptable to the Bank, provided the value of such collateral is readily ascertainable and the Bank can perfect its security interest in the collateral; and (v) for institutions that qualify as CFIs, secured loans for small business or agriculture, or securities representing a whole interest in such secured loans.[3] *See* 12 U.S.C. 1430(a)(3). Section 1211 of HERA amended section 10(a)(3)(E) to broaden the collateral that may be pledged by CFI members to include secured loans for community development activities.[4]

In addition, prior to HERA, section 10(a)(2) of the Bank Act provided that a Bank could make a long-term advance to a member only for the purposes of providing funds to the member for residential housing finance; it also allowed long term advances to CFI members for purposes of funding small business, small farm, and small agri-business lending.[5] *See* 12 U.S.C. 1430(a)(2). Section 1211 of HERA amended section 10(a)(2)(B) of the Bank Act so that a Bank also may make long term advances to a CFI member to fund community development activities.[6]

Section 1211 of HERA also amended section 10(a)(6) of the Bank Act to provide that the term "community development activities" shall have the meaning given such term by regulation by the Director of FHFA. *See id.* (*amending* 12 U.S.C. 1430(a)(6)). The legislative history of HERA does not further illuminate Congress' intent in making these amendments.

C. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community

[1] *See* section 1302 of HERA.

[2] Effective February 4, 2010, FHFA relocates the part 925 regulations to part 1263 of the FHFA's regulations. *See* 74 FR 22848, 22857 (May 15, 2009); 75 FR 678, 691 (Jan. 5, 2010).

[3] In addition, the Banks under their Community Investment Cash Advance programs (CICA) may provide advances to support economic development that benefit persons based on defined targeted income levels or targeted geographic areas. *See* 12 CFR part 952.

[4] *See* section 1211 of HERA (*amending* 12 U.S.C. 1430(a)(3)(E)).

[5] Applicable regulations define a long term advance as one "with an original term to maturity of greater than five years." 12 CFR 950.1.

[6] *See* section 1211 of HERA (*amending* 12 U.S.C. 1430(a)(2)(B)).

development mission; capital structure; and joint and several liability.[7] The Director also may consider any other differences that are deemed appropriate. In preparing this proposed regulation, the FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. The FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

III. The Proposed Regulation

The FHFA is proposing definitions for community development, community development loans, and other terms as needed, to implement the new CFI collateral provisions adopted by HERA. The FHFA also proposes to amend the regulations addressing the purposes for which a Bank may make long term advances to include community development loans made by CFI members. The proposed rule also would make a change to the advances regulation which would incorporate a long standing policy previously established by the FHFB that any form of secured lending by a Bank to a member of the Bank System is deemed to be an advance and extend that policy to cover secured lending transactions by a Bank to affiliates of members. Finally, the FHFA is proposing to transfer the existing advances regulations from part 950 and the existing new business activity regulation from part 980 of the FHFB's regulations (12 CFR parts 950 and 980) to new parts 1266 and 1272 of the FHFA's regulations, incorporate certain definitions that had been in part 900 of the FHFB rules into new proposed parts 1266 and 1272, and make additional conforming changes to these rules.[8]

A. Proposed Definitions

Under the proposed transfer of the current part 950 advances regulation, the definition section of that regulation would be redesignated as § 1266.1. FHFA is proposing to amend redesignated § 1266.1 to make changes necessary to implement the CFI collateral amendments adopted by HERA, as described above, and to make other conforming changes.

First, FHFA is proposing to define "community development" with reference to the definition for this term adopted by CFI members' primary federal regulators under Community Reinvestment Act (CRA) regulations.[9] The definitions were jointly adopted by the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of Thrift Supervision (OTS) and are substantively the same.[10] Under the definitions, "community development" encompasses affordable housing, community services targeted to low- and moderate-income individuals, economic development activities through financing of businesses and farms that meet size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company Programs or have gross annual revenues of $1 million or less, and activities that revitalize or stabilize low- or moderate-income geographies, designated disaster areas, or certain designated, distressed, or underserved non-metropolitan middle-income geographies.[11] Basing the new definition on the current CRA regulations should strengthen the CFI members' ability to use advances in financing the development needs of their local communities as embodied by their CRA obligations.

In turn, FHFA is proposing to define "community development loan" as a loan that has community development as its primary purpose. FHFA recognizes, however, that many loans that are extended to support community development, as that term is defined in the referenced CRA regulations, would already be acceptable collateral for advances under existing FHFA regulations. For example, all loans for affordable housing likely would qualify as eligible security for advances as mortgages or other real estate-related collateral. Because FHFA does not intend the proposed definition to call into question the validity of any security pledged (or to be pledged) under the categories of eligible collateral already identified in the advances regulation for all members, the proposed definition of "community development loan" would exclude categories of eligible collateral now identified in § 950.7(a) of the advances rule [12] from its scope. FHFA recognizes that there would also likely be overlap between "community development loans" and other types of collateral that may be pledged exclusively by CFI members. For example, loans that promote economic development by financing small businesses and farms could already qualify for use by CFI members as advances collateral, as small business loans, small farm loans, or small agri-business loans, as currently defined in the advances regulation. However, these types of collateral including the new community development loans can be pledged only by CFI members, so there appears to be no need to carve out the existing categories of eligible CFI collateral from the proposed definition.

The proposed definition of "community development loan" also specifically excludes consumer loans or credit extended to one or more individuals for household, family, or other personal expenditures. This exclusion is intended to make clear that FHFA is not proposing that consumer loans, such as auto loans, even if made to low- or moderate-income individuals or households, would be considered eligible collateral for advances as a "community development loan." This proposed provision, however, would not change the status of any loan that qualifies as eligible collateral for advances under existing categories of collateral in the current regulations. For example, the proposed language would not affect the status of home equity loans as other real estate-related collateral eligible to secure advances.

Although many community development loans would be eligible collateral for CFI members under pre-HERA statutory and regulatory provisions, FHFA believes that the proposed definitions of "community development" and "community development loan" would allow for at least marginal expansion in the types of loans that CFI members can pledge as security for advances. For example, the proposed definition could allow CFI members to accept certain types of loans that are meant to revitalize or stabilize certain designated, distressed, or underserved non-metropolitan middle income geographies that would qualify as community development loans under the referenced definitions adopted by federal banking regulators but would not necessarily qualify as collateral under existing advances regulations. FHFA specifically requests comments on whether, and how, these proposed definitions might be altered to better help CFI members fund community development activities while continuing to assure that advances be secured only by high quality collateral.

[7] *See* section 1201 of HERA (*amending* 12 U.S.C. 4513).

[8] The definitions in part 900 of the FHFB rules apply only to regulations contained in chapter 9 of Title 12 of the Combined Federal Regulations. Thus, definitions in part 900 would no longer be applicable to the advances or the new business activities regulations once they transferred to new parts 1266 and 1272.

[9] *See* 12 CFR 25.12, 228.12, 345.12, and 563e.12.

[10] *See* 60 FR 22156 (May 4, 1995); 61 FR 21363 (May 10, 1996); 70 FR 44266 (Aug. 2, 2005); 71 FR 18618 (Apr. 12, 2006).

[11] *See* 12 CFR 25.12, 228.12, 345.12, 563e.12.

[12] As part of the proposed transfer of the advances regulation to part 1266, this provision would be redesignated as § 1266.7(a).

FHFA is also proposing a new definition of "residential housing finance assets" that would incorporate community development loans and thereby implement the HERA amendment that allows CFIs to rely on long-term advances to fund this type of loan. To avoid confusion with the term "community development loan", FHFA is also proposing to remove the reference to "community lending" from the current definition and incorporate each element of "community lending", as defined in § 900.2,[13] into the definition of "residential housing finance assets". Thus, the proposed new definition of "residential housing finance assets" would specifically refer to "loans or investments providing financing for economic development projects for targeted beneficiaries" and for CFI members, to the extent not already included, "small business loans, small farm loans, small agri-business loans, or community development loans." Other than adding "community development loans", the proposed changes are editorial in nature and would not alter the scope of the current definition for "residential housing finance assets".

FHFA is also proposing to add to newly designated § 1266.1 definitions for "Bank Act", "advances", "Bank", and "targeted beneficiaries". These definitions are contained in § 900.1 or § 900.2 of the FHFB rules, and FHFA is proposing to carry them over to newly designated part 1266 without substantive change.[14]

B. Long-Term Advances

Current § 950.3 implements section 10(a)(2) of the Bank Act by providing that a Bank shall make long-term advances only for the purpose of enabling a member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans, and small agri-business loans. This provision would be redesignated as § 1266.3 by the proposed rule. Because, as already noted, FHFA is proposing to add specific references to small business loans, small farm loans, small agri-business loans, and community development loans in the definition of "residential housing finance assets", FHFA also is proposing to remove references to such CFI-specific collateral from the redesignated § 1266.3(a) as redundant. No other changes are being proposed for this section.

C. Collateral

Current § 950.7(b) implements section 10(a)(3)(E) of the Bank Act, which sets forth additional eligible collateral that can be pledged by CFI members only to secure advances from a Bank. Section 950.7 would be redesignated as § 1266.7 under this proposed rule. The FHFA is proposing to implement the HERA provision allowing CFI members to pledge loans for community development activities as collateral for advances by adding "community development loans" to the list of CFI-specific collateral set forth in the redesignated § 1266.7(b)(1). No other changes are being proposed to this provision.

A Bank's acceptance of "community development loans" would need to meet the same requirements as its acceptance of other types of CFI collateral. Thus, community development loans pledged by CFI members to secure advances would need to be fully secured by collateral other than real estate. In addition, any eligible community development loan would have to have a readily ascertainable value, be able to be reliably discounted to account for liquidation or other risk, and be able to be liquidated in due course, and the Bank would have to be able to perfect a security interest in such loan. A Bank's acceptance of specific types of "community development loans" to secure an advance would also be subject to its first meeting the requirements of the new business activities rule, currently set forth in 12 CFR part 980.[15] The proposed changes would also allow a Bank to accept as collateral for advances, a security representing a whole interest in community development loans, subject to the Bank's first fulfilling any obligations under the new business activities rule. A Bank's acceptance of "community development loans" would also be subject to all relevant FHFA policies and guidance that apply to acceptance of other types of collateral to secure advances, such as the guidance on anti-predatory lending policies contained in Advisory Bulletin 2005–AB–08.

D. Status of Secured Lending Under the Advances Regulation

FHFA is also proposing to amend newly designated § 1266.2 of the advances regulation to incorporate a long-standing position that any secured lending by a Bank to members is deemed an advance subject to all requirements related to advances. This position was first taken by the FHFB in 1995 by resolution; this resolution has not been rescinded and is still in effect. *See* Fin. Brd. Res. No. 95–13 (Aug. 9, 1995). The purpose of the resolution was to prevent Banks from using other forms of secured lending to members, such as reverse repurchase transactions, to avoid specific requirements and obligations associated with making advances to members.

This remains a concern, even if, because of amendments to the Bank Act, the specific issue which motivated the original resolution is no longer relevant. FHFA is proposing to codify the position taken in the old FHFB resolution as new § 1266.2(e) to make clear that it intends this restriction to continue to apply and that it does not believe that members, or the Banks, should be able to avoid requirements applied to advances, including stock purchase requirements, by allowing members to borrow from the Banks using other forms of secured transactions. Further, to assure that the proposed provision cannot be circumvented by a Bank extending secured credit to an affiliate of a member, the proposed provision also would be applied to any affiliate of a member.[16] Members and their affiliates are able to enter transactions with each other to provide funding and liquidity, and thereby, can extend the benefits of borrowing from the Bank among affiliated parties. In fact, the advances regulation has long recognized that affiliates of a member can play a role in helping the member secure financing from a Bank, and has allowed affiliates to pledge collateral for advances subject to certain specific requirements. *See* § 950.7(g). Given this link, FHFA believes that it is appropriate to close what could be another means for members to avoid regulatory requirements associated with advances by incorporating into the regulations a provision providing that, because secured extensions of credit are deemed to be advances, they are not to be made to member affiliates.

E. New Business Activities

FHFA is proposing to transfer the new business activities rule from part 980 of the FHFB regulations to part 1272 of FHFA regulations. FHFA is also proposing to make conforming changes

[13] The current definition of "residential housing finance assets" incorrectly states that "community lending" is defined in § 900.1 rather than in § 900.2.

[14] *See* n.8, *supra.*

[15] As already noted, this rulemaking would also relocate the part 980 rules in their entirety to 12 CFR part 1272.

[16] An "affiliate" is currently defined in the advances regulation as "any business entity that controls, is controlled by, or is under common control with, a member." *See* § 950.1.

to part 1272, including adding definitions for "Bank" and "FHFA". The proposed definitions are the same as those being proposed in part 1266. No substantive changes to the new business activities regulation are being proposed.

IV. Paperwork Reduction Act

The information collection contained in the Data Reporting Manual, entitled "Advances to Housing Associates," has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). The proposed amendments to the advances regulations do not substantively or materially modify the approved information collection. The proposed changes to the new business activity regulation do not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the OMB for review.

V. Regulatory Flexibility Act

The proposed amendments apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, FHFA certifies this proposed regulation, if promulgated as a final regulation, will not have significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 950, 980, 1266 and 1272

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Housing Finance Agency proposes to amend chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

PART 950—[REDESIGNATED AS PART 1266]

1. Transfer 12 CFR part 950 from chapter IX, subchapter G, to chapter XII, subchapter D, and redesignate as 12 CFR part 1266.

PART 980—[REDESIGNATED AS PART 1272]

2. Transfer 12 CFR part 980 from chapter IX, subchapter J, to chapter XII, subchapter D, and redesignate as 12 CFR part 1272.

PART 1266—ADVANCES

3. The authority citation for newly redesignated part 1266 is revised to read as follows:

Authority: 12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).

4. Revise the heading in the newly redesignated part 1266 to read as set forth above.

5. Amend the newly redesignated part 1266 as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
§ 1266.1, Definition of *CFI member*	§ 925.1, each place that it appears	§ 1263.1.
§ 1261.1, Definition of *State housing finance agency*	§ 926.1 of this chapter	§ 926.1 of this title.
§ 1266.4(g)(2)(i)	§ 950.2(b)(2)	§ 1266.2(b)(2).
§ 1266.4(g)(2)(ii)	§ 950.2(a)	§ 1266.2(a).
§ 1266.6(a)	§ 917.4 of this chapter	§ 917.4 of this title.
§ 1266.9(a)	§ 950.2(c)	§ 1266.2(c).
§ 1266.10(a)	§ 917.4 of this chapter	§ 917.4 of this title.
§ 1266.16	§§ 950.14 and 950.17	§§ 1266.14 and 1266.17.
§ 1266.17(a)	part 925	part 1263.
§ 1266.17(b)(2)(i)	§ 926.3(b)	§ 926.3(b) of this title.
§ 1266.17(b)(2)(i)(A)	§ 950.7(a)(1) or (2)	§ 1266.7(a)(1) or (2).
§ 1266.17(b)(2)(i)(B)	§ 950.7(a)(3)	§ 1266.7(a)(3).
§ 1266.17(b)(2)(i)(C)	§ 950.7(a)(4)	§ 1266.7(a)(4).
§ 1266.17(c)(2)(i)	§ 950.3(b), each time it appears	§ 1266.3(b).
§ 1266.17(c)(2)(ii)	§ 950.5(b)(2)	§ 1266.5(b)(2).
§ 1266.17(e)(2)	part 926 of this chapter	part 926 of this title.
§ 1266.17(e)(3)	part 926 of this chapter	part 926 of this title.

6. In newly redesignated part 1266, revise all references to "Finance Board" to read "FHFA" and revise all references to "Act" to read "Bank Act".

7. In newly redesignated § 1266.1, add in correct alphabetical order definitions for "Advance", "Bank", "Bank Act", "Community development", "Community development loan", "FHFA", and "Targeted beneficiaries", and revise the definition of "Residential housing finance assets" to read as follows:

§ 1266.1 Definitions.

* * * * *

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Bank Act and this part.

* * * * *

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

* * * * *

Community development has the same meaning as under the definition set forth in the Community Reinvestment rule for the Federal Reserve System (12 CFR part 228), Federal Deposit Insurance Corporation (12 CFR part 345), the Office of Thrift Supervision (12 CFR part 563e) or the Office of the Comptroller of the Currency (12 CFR part 25), whichever is the CFI member's primary federal regulator.

Community development loan means a loan that has as its primary purpose community development, but such loans shall not include:

(1) Any loan or instrument that qualifies as eligible security for an

advance under § 1266.7(a) of this part; or

(2) Consumer loans or credit extended to one or more individuals for household, family or other personal expenditures.

* * * * *

FHFA means the Federal Housing Finance Agency.

* * * * *

Residential housing finance assets means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans or investments providing financing for economic development projects for targeted beneficiaries;

(5) Loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property;

(6) Any loans or investments which the FHFA, in its discretion, otherwise determines to be residential housing finance assets; and

(7) For CFI members, and to the extent not already included in categories (1) through (6), small business loans, small farm loans, small agri-business loans, or community development loans.

* * * * *

Targeted beneficiaries has the meaning set forth in § 952.1 of this title.

8. Revise newly designated § 1226.2 by adding new paragraph (e) to read as follows:

§ 1266.2 Authorization and application for advances; obligation to repay advances.

* * * * *

(e) *Status of secured lending.* All secured extensions of credit by a Bank to a member of any Bank, regardless of the form of the transaction, shall be considered an advance subject to the requirements of this part. Because advances to an affiliate of a member are not permitted under the Bank Act, or this part, secured extensions of credit also cannot be made by a Bank to an affiliate of any member.

9. Revise newly redesignated § 1266.3 to read as follows:

§ 1266.3 Purpose of long-term advances; Proxy test.

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

(2) Applications for CICA advances are exempt from the requirements of paragraph (b)(1) of this section.

10. Amend newly redesignated § 1266.7 by revising paragraph (b)(1) to read as follows:

§ 1266.7 Collateral.

* * * * *

(b) * * *

(1) *General.* Subject to the requirements set forth in part 1272 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans, small agri-business loans, or community development loans, in each case fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that:

(i) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and

(ii) The Bank can perfect a security interest in such collateral.

* * * * *

PART 1272—NEW BUSINESS ACTIVITIES

11. The authority citation for newly redesignated part 1272 is revised to read as follows:

Authority: 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a).

12. Revise the heading in the newly redesignated part 1272 to read as set forth above.

13. Amend the references in the newly redesignated part 1272 as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
§ 1272.1, Definition of *new business activity*	§ 950.7(a)(4)	§ 1266.7(a)(4).
§ 1272.1, Definition of *new business activity*	§ 950.7(b)	§ 1266.7(b).
§ 1272.3, Introductory text	§ 980.4(b)	§ 1272.4(b).
§ 1272.3(b), Introductory text	§ 950.7	§ 1266.7.
§ 1272.3(b)(3)	§ 950.10	§ 1266.10.
§ 1272.4(a)	§ 980.3	§ 1272.3.
§ 1272.4(a)	§ 980.5(a)(1) through (4)	§ 1272.5(a)(1) through (4).
§ 1272.4(b)	§ 950.7(a)(4)	§ 1266.7(a)(4).
§ 1272.4(b)	§ 980.3	§ 1272.3.
§ 1272.4(c)	§ 980.6	§ 1272.6.
§ 1272.5(a), Introductory text	§ 980.3	§ 1272.3.
§ 1272.5(a)(4)	§ 980.7	§ 1272.7.
§ 1272.5(a)(5)	§ 980.7	§ 1272.7.
§ 1272.5(b)	§ 980.6	§ 1272.6.

14. Amend newly redesignated part 1272 by revising all references to "Finance Board" to read "FHFA".

15. Amend newly redesignated § 1272.1 by adding in correct alphabetical order definitions for "Bank" and "FHFA" to read as follows:

§ 1272.1 Definitions.

* * * * *

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

FHFA means the Federal Housing Finance Agency.

* * * * *

Dated: February 16, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–3407 Filed 2–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Models TAE 125–01 and TAE 125–02–99 Reciprocating Engines Installed in, But Not Limited to, Diamond Aircraft Industries Model DA 42 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This supplemental NPRM revises an earlier proposed airworthiness directive (AD) for the products listed above. This proposed AD results from additional mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Engine in-flight shutdown incidents have been reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the Proportional Pressure Reducing Valve (PPRV) (also known as Propeller Control Valve) due to high vibrations. This condition, if not corrected, could lead to further cases of engine in-flight shutdown, possibly resulting in reduced control of the aircraft. Since the release of European Aviation Safety Agency (EASA) AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns. We are proposing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: We must receive comments on this proposed AD by March 25, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued AD 2009–0224, dated October 20, 2009, AD 2009–0193, dated August 27, 2009, and AD 2009–0193R1, dated December 1, 2009 (referred to after this as "the MCAIs"), to correct an unsafe condition for the specified products. These MCAIs state:

> Engine in-flight shutdown incidents have been reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the PPRV due to high vibrations. This condition, if not corrected, could lead to further cases of engine in-flight shutdown, possibly resulting in reduced control of the aircraft.
>
> Since the release of EASA AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns.

Since we issued the original proposed AD on April 13, 2009 (74 FR 17795, April 17, 2009):

- TAE has identified the gearbox as the primary source of vibrations causing the failures of the propeller control valves.
- EASA revised AD 2008–0145 with AD 2008–0145R1, which reduced the applicability to cover only TAE 125–01 engines, superseded AD 2008–0145R1 with AD 2009–0193, and revised that AD with AD 2009–0193R1. AD 2009–0193R1 requires, for TAE 125–01 engines, initial and repetitive replacements of the PPRV, inspection of the electrical connectors of the PPRV and replacement of the connectors if damaged, installation of a vibration isolator between the engine gearbox and the propeller's constant speed unit, replacement of the aluminum pipe that connects the PPRV to the constant speed unit with a flexible hose, and replacement of the de-icing nozzle bracket with a redesigned bracket.
- EASA also issued AD 2009–0151 and superseded it with AD 2009–0224, which requires for TAE 125–02–99 engines, initial and repetitive replacements of the PPRV, and installation of a vibration isolator between the engine gearbox and the propeller's constant speed unit.

You may obtain further information by examining the MCAIs in the AD docket.

Relevant Service Information

Thielert Aircraft Engines GmbH has issued Service Bulletin (SB) No. TM TAE 125–1007 P1, Revision 2, dated April 29, 2009, SB No. TM TAE 125–1009 P1, Revision 3, dated October 14,

2009, SB No. TM TAE 125–0018, Revision 1, dated November 12, 2008, and SB No. TM TAE 125–0020, Revision 1, dated November 25, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Differences Between This Proposed AD and the MCAI

We have reviewed the MCAIs and, in general, agree with their substance. But we have found it necessary to not reference the second paragraph of the unsafe condition from EASA AD 2009–0224. That sentence stated that the problem has only manifested itself on those Thielert engines installed on Diamond Aircraft Industries DA 42 aircraft. The affected engines which require a PPRV could be used on other make and model airplanes in the future.

We also did not incorporate the February 28, 2010 compliance date which is in EASA AD 2009–0193R1, or the January 31, 2010 compliance date which is in EASA AD 2009–0224.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA has notified us of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require initial and repetitive replacements of the PPRV and installation of a vibration isolator to the gearbox assembly.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 300 TAE 125–01 and TAE 125–02–99 reciprocating engines installed in Diamond Aircraft Industries Model DA 42 airplanes of U.S. registry. We also estimate that it would take about 0.25 work-hour per engine to replace a PPRV and install a vibration isolator to the gearbox assembly. The average labor rate is $85 per work-hour. Required parts would cost about $275 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $88,875.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Thielert Aircraft Engines GmbH: Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD.

Comments Due Date

(a) We must receive comments by March 25, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) models TAE 125–01 and TAE 125–02–99 reciprocating engines designated with part number (P/N) 05–7200–K000301 or 02–7200–1401R1. The engines are installed on, but not limited to, Diamond Aircraft Industries Model DA 42 airplanes.

Reason

(d) Engine in-flight shutdown incidents have been reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the Proportional Pressure Reducing Valve (PPRV) (also known as Propeller Control Valve) due to high vibrations. This condition, if not corrected, could lead to further cases of engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Since the release of European Aviation Safety Agency (EASA) AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions:

TAE 125–02–99 Reciprocating Engines

(1) For TAE 125–02–99 reciprocating engines with engine P/N 05–7200–K000301, within 55 flight hours after the effective date of this AD:

(i) Replace the existing PPRV with PPRV, P/N 05–7212–E002801. Use paragraphs A. through B. of Thielert Service Bulletin (SB) No. TM TAE 125–1007 P1, Revision 2, dated April 29, 2009, to do the replacement.

(ii) Install a vibration isolator, P/N 05–7212–K022302, to the gearbox assembly. Use paragraphs 1 through 20 of Thielert SB No. TM TAE 125–1009 P1, Revision 3, dated October 14, 2009, to do the installation.

Repetitive PPRV Replacements

(2) Thereafter, within every 300 flight hours, replace the PPRV, P/N 05–7212–E002801, with the same P/N PPRV.

TAE 125–01 Reciprocating Engines

(3) For TAE 125–01 reciprocating engines with engine P/N 02–7200–1401R1, within 55 flight hours after the effective date of this AD:

(i) Replace the existing PPRV with a PPRV, P/N NM–0000–0124501 or P/N 05–7212–K021401. Use paragraph 1 of Thielert SB No. TM TAE 125–0018, Revision 1, dated November 12, 2008, to do the replacement.

(ii) Inspect the electrical connectors of the PPRV and replace the connectors if damaged, and install a vibration isolator, P/N 05–7212–K023801, to the gearbox assembly. Use paragraphs 1 through 27 of Thielert SB No. TM TAE 125–0020, Revision 1, dated November 25, 2009, to do the inspection and installation.

Repetitive PPRV Replacements

(4) Thereafter, within every 300 flight hours, replace the PPRV with a PPRV, P/N NM–0000–0124501 or P/N 05–7212–K021401.

FAA Differences

(f) We have found it necessary to not reference the second paragraph of the unsafe condition from the MCAI EASA AD 2009–0224. That sentence stated that the problem has only manifested itself on those Thielert engines installed on Diamond Aircraft Industries DA 42 aircraft. The affected engines which require a PPRV could be used on other make and model airplanes in the future.

(g) We also did not reference the February 28, 2010 compliance date, which is in EASA AD 2009–0193R1, or the January 31, 2010 compliance date which is in EASA AD 2009–0224.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to EASA AD 2009–0224, dated October 20, 2009 (TAE 125–02–99), and EASA AD 2009–0193R1, dated December 1, 2009 (TAE 125–01), for related information.

(j) Refer to Thielert SB No. TM TAE 125–1007 P1, Revision 2, dated April 29, 2009, and Thielert SB No. TM TAE 125–1009 P1, Revision 3, dated October 14, 2009 (TAE 125–02–99), for related information.

(k) Refer to Thielert SB No. TM TAE 125–0018, Revision 1, dated November 12, 2008, and Thielert SB No. TM TAE 125–0020, Revision 1, dated November 25, 2009 (TAE 125–01), for related information.

(l) Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–2912; e-mail: *info@centurion-engines.com,* for a copy of the service information referenced in this AD.

(m) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov*; telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on February 16, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–3484 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.

* * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing. This condition could be accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position and eliminate controllability of the airplane on the ground. This may consequently result in structural damage to the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 22, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANN–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on August 19, 2009 (74 FR 41810). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Paragraph (c) of the original NPRM specifies that the AD applies to certain airplanes modified by certain Brazilian supplemental type certificates (STCs) and that are equipped with the affected part. Brazilian STCs do not apply to U.S. airplanes. The applicability of this supplemental NPRM would therefore not depend on accomplishment of the Brazilian STC. We have removed the reference to the Brazilian STCs from the applicability of this supplemental NPRM. We have coordinated this issue with Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil.

Relevant Service Information

We have reviewed EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009. The original NPRM cited EMBRAER Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008, as the appropriate source of service information for replacing the landing gear electronic unit (LGEU) with a new one having a new part number. EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009, revises the effectivity but adds no new actions. We have revised paragraphs (g)(1) and (g)(3) (paragraphs (f)(1) and (f)(3) of the original NPRM) and Note 1 of this supplemental NPRM to refer to Revision 02. We have also added EMBRAER Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008, to Table 1 of this supplemental NPRM to provide credit for actions done in accordance with EMBRAER Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008.

Comments

We have considered the following comments received on the original NPRM.

Request To Include Installation of LGEU Having Part Number (P/N) 355–022–003 in the Aircraft Maintenance Manual

American Eagle Airlines requests that we revise the original NPRM to also allow replacing the LGEU, in accordance with Section 32–32–01 Part II of the EMBRAER Aircraft Maintenance Manual (AMM), as an acceptable method of compliance with the requirements of paragraph (g) of the original NPRM. Paragraph (g) of the original NPRM would have required replacing LGEU having P/N 355–022–002 with P/N 355–002–003, in accordance with EMBRAER Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

We disagree with the request. Section 32–32–01 of the EMBRAER AMM does not include all the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008; or 145LEG–32–0032, Revision 02, dated February 17, 2009. Neither the FAA nor the Brazilian authorities approve the AMM. However, operators may apply for an alternative method of compliance in accordance with the provisions specified in paragraph (h)(1) of this supplemental NPRM. No change has been made to this supplemental NPRM in this regard.

Request To Revise Compliance Times

The Airline Pilots Association requests that we revise the compliance times to 12 months for replacing all LGEUs. The original NPRM specifies replacing LGEUs having P/N 355–022–002 having serial numbers (S/Ns) 1000 through 1999 with new LGEUs having P/N 355–022–003 within 12 months after the effective date of the AD. It also specifies replacing LGEUs having P/N 355–022–002 having other serial numbers with new LGEUs having P/N 355–022–003 within 30 months after the effective date of this AD. The commenter provides no justification for this request.

We disagree with the request to revise the compliance times. All LGEUs identified in this AD have the potential to fail. However, according to the manufacturer's data, LGEUs having P/N 1000 through 1999 have certain internal components that could fail sooner than the internal components of the other LGEUs. For this reason LGEUs having P/N 1000 through 1999 should be removed and replaced sooner than the other LGEUs. By replacing LGEUs having P/N 1000 through 1999 sooner as a result of a shorter compliance time, the same level of safety for all operators of the affected airplane is maintained. No change has been made to this supplemental NPRM in this regard.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 711 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $120,870, or $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD.

Comments Due Date

(a) We must receive comments by March 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; equipped with landing gear electronic unit (LGEU) having part number (P/N) 355–022–002.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.

* * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing. This condition could be accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position and eliminate controllability of the airplane on the ground. This may consequently result in structural damage to the airplane. Required actions include replacing the LGEU with a new one having a new part number.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Unless already done, do the following actions:

(1) Within 12 months after the effective date of this AD, replace any LGEU having P/N 355–022–002 having a serial number (S/N) 1000 through 1999 inclusive with a new LGEU having P/N 355–022–003, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

(2) As of 12 months after the effective date of this AD, no person may install on any airplane an LGEU having a P/N 355–022–002 having a S/N 1000 through 1999 inclusive.

(3) Within 30 months after the effective date of this AD, replace any LGEU having P/N 355–022–002 having a serial number not identified in paragraph (g)(1) of this AD, with a new LGEU having P/N 355–022–003, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

(4) As of 30 months after the effective date of this AD, no person may install on any airplane an LGEU having a P/N 355–022–002 and a serial number not identified in paragraph (g)(1) of this AD.

(5) Replacing the LGEU is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with one of the service bulletins identified in Table 1 of this AD:

TABLE 1—CREDIT SERVICE BULLETINS

Embraer Service Bulletin—	Revision—	Dated—
145LEG–32–0032	Original	October 8, 2008.
145LEG–32–0032	01	November 4, 2008.
145–32–0120	Original	September 15, 2008.
145–32–0120	01	November 4, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although EMBRAER Service Bulletins 145LEG–32–0032, Revision 02, dated February 17, 2009; and 145–32–0120, Revision 02, dated February 17, 2009; specify that no person may install on any airplane an LGEU having P/N 355–022–002 as of 30 months after the effective date of this AD, we have determined that no LGEU having P/N 355–022–002 with a S/N 1000 through 1999 inclusive may be installed as of 12 months after the effective date of this AD. Allowing installation of those serial numbers beyond 12 months would not address the identified unsafe condition and ensure an adequate level of safety. This difference has been coordinated with the Agência Nacional de Aviação Civil (ANAC).

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI ANAC Airworthiness Directive 2009–01–01, effective January 8, 2009, as corrected by Brazilian Airworthiness Directive Errata, effective January 20, 2009; and Embraer Service Bulletins 145–32–0120, Revision 02, dated February 17, 2009; and 145LEG–32–0032, Revision 02, dated February 17, 2009; for related information.

Issued in Renton, Washington, on February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3441 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0158; Directorate Identifier 2010–CE–006–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held by Raytheon Aircraft Company) Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model 390 airplanes. This proposed AD would require you to inspect the essential bus lightning strike protection for proper installation of metal oxide varistor (MOV) and spark gap wiring. This proposed AD would also require you to rework the wiring as necessary to achieve the required lightning strike/surge protection. This proposed AD results from a report that the wires to the MOV and spark gap were swapped. We are proposing this AD to detect and correct improper installation of the MOV and spark gap wiring, which could result in overload of the MOV in a lightning strike and allow electrical energy to continue to the essential bus and disable equipment that receives power from the essential bus. The disabled equipment could include the autopilot, anti-skid system, hydraulic indicator, spoiler system, pilot primary flight display, audio panel, or the #1 air data computer. This failure could lead to a significant increase in pilot workload during adverse operating conditions.

DATES: We must receive comments on this proposed AD by April 9, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614; Internet: *https://www.hawkerbeechcraft.com/service_support/pubs/.*

FOR FURTHER INFORMATION CONTACT: Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107; e-mail: *kevin.schwemmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA–2010–0158; Directorate Identifier 2010–CE–006–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

We received a report that on a Hawker Beechcraft Corporation Model 390 airplane the wires to the MOV and spark gap were swapped. The swapped wires were discovered during an inspection following a lightning strike. The spark gap has a higher current carrying capability than the MOV and is designed to carry direct currents caused by a lightning strike. In the event of a lightning strike, the potential exists to overload the MOV and allow an electrical spike to pass through to the essential bus.

This condition, if not corrected, could allow electrical energy to continue to the essential bus and disable equipment that receives power from the essential bus. The disabled equipment could include the autopilot, anti-skid system, hydraulic indicator, spoiler system, pilot primary flight display, audio panel, or the #1 air data computer. This failure could lead to a significant increase in pilot workload during adverse operating conditions.

Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 24–3995, issued September 2009. The service information describes procedures for inspecting the essential bus lightning strike protection for proper installation of MOV and spark gap wiring. The service information also describes procedures for rework as necessary to achieve the required lightning strike/surge protection.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to inspect the essential bus lightning strike protection for proper installation of MOV and spark gap wiring. This proposed AD would also require you to rework the wiring as necessary to achieve the required lightning strike/surge protection.

Costs of Compliance

We estimate that this proposed AD would affect 170 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection (includes any necessary follow-on action):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × $85 per hour = $255	Not applicable	$255	$43,350

Warranty credit may be given to the extent specified in Hawker Beechcraft Mandatory Service Bulletin SB 24–3995, issued September 2009.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held By Raytheon Aircraft Company): Docket No. FAA–2010–0158; Directorate Identifier 2010–CE–006–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by April 9, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 390 airplanes, serial numbers RB–4 through RB–248, that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 24: Electric Power.

Unsafe Condition

(e) This AD results from a report that the metal oxide varistor (MOV) and spark gap wiring of the essential bus lightning strike protection were swapped. We are issuing this AD to detect and correct improper installation of the MOV and spark gap wiring, which could result in overload of the MOV in a lightning strike and allow electrical energy to continue to the essential bus and disable equipment that receives power from the essential bus. The disabled equipment could include the autopilot, anti-skid system, hydraulic indicator, spoiler system, pilot primary flight display, audio panel, or the #1 air data computer. This failure could lead to a significant increase in pilot workload during adverse operating conditions.

Compliance

(f) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the essential bus lightning strike protection for proper installation of MOV and spark gap wiring.	Within the next 200 hours time-in-service after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first.	Follow Hawker Mandatory Service Bulletin SB 24–3995, issued September 2009.
(2) Where improper wiring installation is found, rework the essential bus lightning strike wiring installation for the MOV and spark gap.	Before further flight after the inspection in paragraph (f)(1) of this AD.	Follow Hawker Mandatory Service Bulletin SB 24–3995, issued September 2009.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107; e-mail: *kevin.schwemmer@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(h) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614; Internet: *https://www.hawkerbeechcraft.com/service_support/pubs/.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on February 16, 2010.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3538 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0129; Directorate Identifier 2009–NM–245–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus A318, A319, A320, A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Several occurrences of loss of the AC [alternating current] BUS 1 have been reported which led in some instances to the loss of the AC ESS [essential] BUS and DC [direct current] ESS BUS and connected systems. The affected systems include multiple flight deck Display Units (Primary Flight Display, Navigation Display and Upper Electronic Centralised Aircraft Monitoring display). The loss of multiple display units, if not corrected expediently during a high workload period, potentially affects the capability of the flight crew and could contribute to a loss of situational awareness and consequent control of the aeroplane, which would constitute an unsafe condition.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 9, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0129; Directorate Identifier 2009–NM–245–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0235, dated October 29, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Several occurrences of loss of the AC [alternating current] BUS 1 have been reported which led in some instances to the loss of the AC ESS [essential] BUS and DC [direct current] ESS BUS and connected systems. The affected systems include multiple flight deck Display Units (Primary Flight Display, Navigation Display and Upper Electronic Centralised Aircraft Monitoring display).
>
> The reasons for these events have been investigated but have not been fully established for all cases.
>
> Due to the range of system losses some crews reported difficulty in establishing the failure cause during the events and, consequently, the appropriate actions to be taken may not be completed in a timely manner.
>
> The loss of multiple display units, if not corrected expediently during a high workload period, potentially affects the capability of the flight crew and could contribute to a loss of situational awareness and consequent control of the aeroplane, which would constitute an unsafe condition.
>
> This AD therefore mandates the modification of the electrical network configuration management logic consisting in adding an automatic switching of the AC and DC ESS BUS power supply such that upon the loss of the AC BUS 1, the AC BUS 2 will automatically take over the power supply. On pre-MOD aeroplanes, this power supply switching can only be accomplished manually from the cockpit and is covered by an Electronic Centralized Aircraft Monitoring (ECAM) procedure.

The modification of the electrical power distribution system includes, depending on the configuration, adding a new circuit breaker and new relay to the AC/DC ESS BUS circuit, and adding a diode between a certain relay and terminal block. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–24–1120, Revision 03, dated July 10, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 633 products of U.S. registry. We also estimate that it would take about 46 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,200 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,867,630, or $6,110 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2010–0129; Directorate Identifier 2009–NM–245–AD.

Comments Due Date

(a) We must receive comments by April 9, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers; except airplanes that have received Airbus modification 37317 in production.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

"Several occurrences of loss of the AC [alternating current] BUS 1 have been reported which led in some instances to the loss of the AC ESS [essential] BUS and DC [direct current] ESS BUS and connected systems. The affected systems include multiple flight deck Display Units (Primary Flight Display, Navigation Display and Upper Electronic Centralised Aircraft Monitoring display).

"The reasons for these events have been investigated but have not been fully established for all cases.

"Due to the range of system losses some crews reported difficulty in establishing the failure cause during the events and, consequently, the appropriate actions to be taken may not be completed in a timely manner.

"The loss of multiple display units, if not corrected expediently during a high workload period, potentially affects the capability of the flight crew and could contribute to a loss of situational awareness and consequent control of the aeroplane, which would constitute an unsafe condition.

"This AD therefore mandates the modification of the electrical network configuration management logic consisting in adding an automatic switching of the AC and DC ESS BUS power supply such that upon the loss of the AC BUS 1, the AC BUS 2 will automatically take over the power supply. On pre-MOD aeroplanes, this power supply switching can only be accomplished manually from the cockpit and is covered by an Electronic Centralized Aircraft Monitoring (ECAM) procedure."

The modification of the electrical power distribution system includes, depending on the configuration, adding a new circuit breaker and new relay to the AC/DC ESS BUS circuit, and adding a diode between a certain relay and terminal block.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 48 months after the effective date of this AD, modify the electrical power distribution system, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–24–1120, Revision 03, dated July 10, 2009.

(h) Actions accomplished before the effective date of this AD, in accordance with a service bulletin identified in Table 1 of this AD, are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1—CREDIT SERVICE INFORMATION

Airbus Service Bulletin—	Revision—	Dated—
A320–24–1120	Original	May 31, 2007.
A320–24–1120	01	December 19, 2007.
A320–24–1120	02	July 8, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0235, dated October 29, 2009; and Airbus Service Bulletin A320–24–1120, Revision 03, dated July 10, 2009; for related information.

Issued in Renton, Washington, on February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3442 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0023]

RIN 1625–AA00

Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the Great Wicomico River in the vicinity of Mila, VA in support of the Wicomico Community Fireworks event. This action is intended to restrict vessel traffic movement on the Great Wicomico River to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before April 26, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–

2010–0023 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LT Tiffany Duffy, Chief Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone (757) 668–5580, e-mail *Tiffany.A.Duffy@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0023), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0023" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0023" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

On July 3, 2010 the Wicomico Church will sponsor a fireworks display on the Great Wicomico River approximately ½ mile down river of Rouge Point Light, at position 37°50′31″ N/076°19′42″ W (NAD 1983). The fireworks are launched on land and the safety zone is intended to keep mariners away from any fall out that may enter in the water. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Great Wicomico River within 420 feet of the fireworks display will be temporarily restricted.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on specified waters of the Great Wicomico River in the vicinity of Mila, Virginia. This safety zone will encompass all navigable waters within 420 feet of the fireworks display located at position 37°50′31″ N/076°19′42″ W (NAD 1983). This regulated area will be established in the interest of public safety during the Wicomico Community Fireworks event and will be enforced from 9 p.m. to 10 p.m. on July 3, 2010, with a rain date of July 4, 2010. Access to the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

Order. The Office of Management and Budget has not reviewed it under that Order. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Great Wicomico River from 9 p.m. to 10 p.m. on July 3, 2010.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an

environmental impact statement is required. A preliminary environmental analysis check list supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule involves establishing a safety zone around a fireworks display. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–XXXX to read as follows:

165.T05–XXXX Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Great Wicomico River located within a 420 foot radius of the fireworks display approximately ½ mile down river of Rouge Point Light, at approximate position 37°50′31″ N/076°19′42″ W (NAD 1983) in the vicinity of Mila, VA.

(b) *Definitions.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Effective Period:* This regulation will be in effect on July 3, 2010, with a rain date of July 4, 2010 from 9 p.m. until 10 p.m.

Dated: February 2, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 2010–3474 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0120; FRL–9116–3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern coarse particulate matter (PM_{10}) emissions from sources of fugitive dust such as construction sites, unpaved roads, and disturbed soils in open and agricultural areas. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 25, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0120, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency, ICAPCD, and submitted by the California Air Resources Board (ARB).

The seven rules listed below constitute ICAPCD's Regulation VIII—Fugitive Dust Rules.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	800	General Requirements for Control of Fine Particulate Matter	11/08/05	06/16/06
	801	Construction & Earthmoving Activities	11/08/05	06/16/06
	802	Bulk Materials	11/08/05	06/16/06
	803	Carry Out & Track Out	11/08/05	06/16/06
	804	Open Areas	11/08/05	06/16/06
	805	Paved & Unpaved Roads	11/08/05	06/16/06
	806	Conservation Management Practices	11/08/05	06/16/06

On July 21, 2006, we found that the State's submittal for ICAPCD Regulation VIII, Rules 800–806, met the completeness criteria in 40 CFR part 51, Appendix V. A completeness determination by EPA means that the submission provides sufficient information for EPA to evaluate it for action under CAA sections 110(k)(3) and (4).

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 800–806 in the SIP.

C. What Is the Purpose of the Submitted Rules?

Exposure to ambient PM_{10} at levels above the NAAQS is harmful to human health and the environment, with effects including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to develop a SIP that meets basic requirements for a national ambient air quality standard (NAAQS). If a state has areas that are designated "nonattainment" for a NAAQS, then section 172, and in the case of the PM_{10}-specific sections 188 and 189, require the state to submit regulations that control emissions of PM_{10} and its precursors, as appropriate, to bring the area into attainment of the NAAQS.

The Imperial Valley is designated nonattainment for $PM_{10.}$ Accordingly, ICAPCD is developing regulations intended to attain the NAAQS. ICAPCD's Regulation VIII consists of seven inter-related rules designed to limit emissions of PM_{10} from anthropogenic fugitive dust sources in Imperial County. Each rule is described briefly below.

Rule 800, General Requirements for Control of Fine Particulate Matter, provides definitions, a compliance schedule, exemptions and other requirements generally applicable to all seven rules. It also describes specific exemptions and requirements for the U.S. Department of Defense (DOD), U.S. Bureau of Land Management (BLM) and U.S. Border Patrol (BP). Appendices A and B describe methods for determining compliance with opacity and surface stabilization requirements in Rules 801 through 805.

Rule 801, Construction and Earthmoving Activities, establishes a 20% opacity limit and control requirements for construction and earthmoving activities. Affected sources must submit a dust control plan and comply with other portions of Regulation VIII regarding bulk materials, carry-out and track-out, and paved and unpaved roads. The rule exempts construction of single family homes and waives the 20% opacity limit in winds over 25 mph under certain conditions.

Rule 802, Bulk Materials, establishes a 20% opacity limit and control requirements for bulk material handling, storage, transport and hauling.

Rule 803, Carry-Out and Track-Out, establishes control requirements for removing carry-out and track-out material transported onto paved roads from unpaved roads and areas.

Rule 804, Open Areas, establishes a 20% opacity limit and requires land owners to prevent vehicular trespass and to stabilize disturbed soil on certain open areas. Agricultural operations are exempt from the rule.

Rule 805, Paved and Unpaved Roads, establishes a 20% opacity limit and control requirements for unpaved haul and access roads, canal roads, and traffic areas that meet certain size or traffic thresholds. Single family residences and agricultural operations are exempt from the rule.

Rule 806, Conservation Management Practices, requires agricultural operation sites greater than 40 acres to implement at least one conservation management practice (CMP) for each of these categories: land preparation and cultivation, harvest activities, unpaved roads and unpaved traffic areas.

EPA's technical support document (TSD) has more specific information about these rules. The submission from ICAPCD also provides additional details and includes the Regulation VIII rules.

II. EPA's Evaluation

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing SIP requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM) for certain emissions sources in moderate PM_{10} nonattainment areas, and Best Available Control Measures (BACM) for such sources in serious PM_{10} nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)).

We used the following guidance and policy documents to evaluate enforceability and to interpret RACM or BACM requirements:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register.**

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

4. "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

5. "PM–10 Guideline Document," EPA 452/R–93–008, April 1993.

6. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2–92–004, September 1992.

Please see our TSD for other documents we have used in our evaluation.

Because Imperial County is a PM_{10} nonattainment area classified as serious (see 40 CFR part 81), Regulation VIII must implement BACM for significant sources of PM_{10} in Imperial County. In guidance, 59 FR 41998 (August 16, 1994), we have defined BACM to be, among other things, the maximum degree of emission reduction achievable from a source category which is determined on a case-by-case basis considering energy, economic, environmental impacts and other costs. A source category is presumed to contribute significantly to a violation of the 24-hour PM_{10} national ambient air quality standard (150 $\mu g/m^3$) if its PM_{10} impact exceeds 5 $\mu g/m^3$. As described in more detail in the TSD, we determined that BACM is required for the following sources of PM_{10} emissions in Imperial County:

TABLE 2—SIGNIFICANT SOURCES OF PM–10 IN IMPERIAL COUNTY

Open areas:
Windblown Dust, Other Open Area.
Unpaved roads:
Entrained Unpaved Road Dust, City/County.
Entrained Unpaved Road Dust, Canal.
Windblown Dust, Unpaved City/County Road.
Windblown Dust, Unpaved Canal Road.
Windblown Dust, Unpaved Farm Road.
Agricultural lands:
Tilling.
Windblown Dust, Non-Pasture Agricultural Lands.

We based the list of significant sources in Table 2 in part on ICAPCD's analysis of such sources in its 2009 PM_{10} attainment plan.[1] However, ICAPCD excluded from its analysis exceedances in 2006 and 2007 that it deemed to be caused by high wind exceptional events. As a result of the exclusion of these exceedances, ICAPCD's list of significant sources did not include any windblown dust sources. The State formally sought to exclude the 2006 and 2007 exceedances for regulatory purposes under EPA's exceptional events rule (40 CFR 50.1(j) and 50.14).[2]

On December 22, 2009, EPA did not concur with the State's request to exclude the 2006 and 2007 exceedances as due to high wind exceptional events.[3] EPA adjusted ICAPCD's significant source analysis to reflect this nonconcurrence, and as a result identified windblown dust from open areas, unpaved roads and non-pasture agricultural lands to be significant sources as reflected in Table 2. We have included the documents supporting our December 22, 2009 nonconcurrence in the docket for this proposed rule.

In addition to the sources in Table 2 above, we believe BACM is required for unpaved traffic areas and agricultural harvest operations. These activities occur at the same facilities and are integrally related to other activities identified as significant (i.e., unpaved roads and tilling respectively). By analogy, where enforceable volatile organic compound (VOC) reasonably available control technology (RACT) level controls are required for refineries, SIP rules generally impose leak detection and repair requirements on valves, flanges, threaded connections, and other related equipment even if emissions from any one of these taken individually might be much smaller than the major source threshold requiring RACT.

B. Do the Rules Meet the Evaluation Criteria?

Rules 800–806 improve the SIP by providing more stringent emission limits, monitoring, recording, and recordkeeping provisions for these sources compared to existing provisions in the SIP for the ICAPCD portion of California. The rules are largely consistent with the relevant statutory requirements, and with relevant policy and guidance regarding enforceability, RACM and BACM. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rules' Deficiencies?

While, as indicated above, BACM is determined on a case-by-case basis, the identification of potential BACM for a significant source category in Imperial County necessarily involves a consideration of control measures adopted and/or implemented in other geographical areas for the same and similar source categories. Therefore, in evaluating Regulation VIII, we have compared its individual rules to analogous requirements in the South Coast Air Quality Management District (SCAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD), Maricopa County Air Quality Department (MCAQD), Clark County Department of Air Quality and Environmental Management (CCDAQEM) and other areas. In doing so, we recognize that some variability exists among sources in different geographical areas, and that technically and economically feasible controls in one area may not be feasible in another area.

Based on our analysis, we believe that Regulation VIII is generally consistent with analogous requirements in other serious PM_{10} areas and includes many provisions consistent with CAA BACM requirements and with EPA's established policy and guidance. However, the deficiencies discussed below preclude EPA's full approval of Regulation VIII. Sections II.C.1 through 3 below identify deficiencies related to sources for which BACM is required as discussed above in Section II.A. Section II.C.4 below identifies one deficiency related to the Regulation VIII rule for bulk materials, a source category for which BACM is not currently required based on the information available to EPA to date. A number of these deficiencies are discussed in more detail in the TSD.

1. BACM–Related Deficiencies For Open Areas

a. Recreational Off-Highway Vehicle Activity

Recreational off-highway vehicle (OHV)[4] activity causes much of the PM_{10} emissions from open areas in Imperial County. Rule 804 regulates only a small portion of these emissions.[5] The vast majority of the OHV emissions in Imperial County are addressed only by requirements in Rule 800 Section F.5 for dust control plans (DCPs) for sources under the control of BLM. While BLM is required to describe in the DCPs the dust control measures that it intends to implement, BLM is not required to implement any specific BACM-level controls for OHV use, and ICAPCD has not provided an analysis of BACM for OHV activity.

ICAPCD must provide an analysis of potential BACM controls for OHV activity in open areas and on unpaved

[1] "2009 Imperial County State Implementation Plan for Particulate Matter Less Than 10 Microns in Aerodynamic Diameter, Final," August 11, 2009, section 3.2.

[2] Letter from James N. Goldstene, ARB, to Deborah Jordan, EPA, May 19, 2009, requesting exclusion of September 2, 2006, April 12, 2007, and June 5, 2007 Imperial County PM_{10} exceedances.

[3] See letter, with enclosure, from Laura Yoshii, EPA, to James Goldstene, ARB, Re: Exceptional events requests regarding exceedances of the PM–10 NAAQS in Imperial County, CA, December 22, 2009.

[4] As used in this discussion and in the TSD, the term "off-highway vehicle" or OHV includes all vehicles subject to the exemption in Rule 800 Section E.6 for recreational use of public lands in Imperial County.

[5] This small portion includes some emissions from OHV activity in Ocotillo Wells State Park where Rule 804 is apparently not being implemented even though State lands are not exempted from the rule's requirements.

roads and paths that are exempt from the specific requirements and measures in Rules 804 and 805 and identify, adopt and submit any appropriate revisions to Rules 800, 804 and 805. Such analysis should address as its starting point measures in EPA's 1992 RACM guidance at 57 FR 18070 (April 28, 1992) and analogous requirements in other geographical areas such as Arizona Revised Statute § 49–457.03 and Clark County Air Quality Regulations, Section 90. ICAPCD should evaluate the feasibility and impacts of additional restrictions in recreational OHV areas, such as closing some of the 250 square miles that are open to OHV use that are particularly likely to impact populations, and restricting OHV activity during summer months when there is virtually no rain to reform surface crusts. In addition, ICAPCD must implement Rules 804 and 805 on all State lands used by OHVs or demonstrate in its BACM analysis that an exemption for OHV activity on such lands is appropriate.

Please see Section III.B.1 of our TSD for further discussion of this deficiency.

b. Definition of "Disturbed Surface"

The term "disturbed surface area" is used in several Regulation VIII rules but is never defined. For example, Rule 804 applies to a source category for which BACM is required and relies on the undefined term to describe rule applicability in Rule 804 Section B. In order to ensure that these rules are enforceable at a BACM level, ICAPCD must define "disturbed surface area" as do, for example, SJVAPCD Rule 8010 and SCAQMD Rule 403.

2. BACM-Related Deficiencies for Unpaved Roads

a. Unpaved Non-Farm Roads

The CAA requires ICAPCD to implement BACM by 2008 (i.e., four years after reclassification to serious).[6] Rule 805 Section E.7 allows the County until 2015 to stabilize heavily-travelled unpaved roads. This schedule is inconsistent with the statutory requirement and ICAPCD has not provided adequate evidence that this schedule is as expeditious as practicable, based upon economic feasibility or any other appropriate consideration. In evaluating economic feasibility of a measure that depends on public funding, EPA considers past funding of similar activities and availability of funding sources to determine whether public agencies have made good faith efforts to expeditiously implement the available control measures. ICAPCD must expedite the schedule for implementation of this measure or demonstrate good faith efforts to increase funding and priority of road stabilization projects consistent with national guidance. Please see Section III.B.3 of our TSD for further discussion of this deficiency.

Rule 805 Section E.7's requirement to stabilize all non-exempt unpaved County roads is also not adequately enforceable as currently structured. If ICAPCD retains the same structure, it must revise Rule 805 Section E.7 to clarify that the County must: (a) Implement (and not just submit) a stabilization plan; (b) stabilize different unpaved roads each year; and (c) maintain all stabilized roads.

b. Unpaved Farm Roads and Traffic Areas

Rule 805 Section D.2 exempts agricultural roads and traffic areas from the opacity and stabilization requirements applicable to non-agricultural operation sites. Farm roads and traffic areas are only required to implement a CMP from the menus for unpaved roads and traffic areas in Rule 806. In contrast, for example, SJVAPCD requires that CMPs be implemented to meet opacity and stabilization requirements at the following thresholds: Unpaved farm roads with ≥ 75 VDT or ≥ 25 average daily vehicle trips by three or more axle vehicles; unpaved traffic areas with ≥ 50 average daily vehicle trips (on an annual basis) or ≥ 25 average daily vehicle trips (on an annual basis) by three or more axle vehicles. ICAPCD must remove the exemption in Rule 805 Section D.2 or demonstrate how BACM is met in Imperial County for farm roads and traffic areas that are subject to less stringent requirements than other roads and traffic areas in the County and farm roads and traffic areas in other areas.

Rule 806 Sections E.3 and E.4 list CMPs intended to control emissions from agricultural unpaved roads and traffic areas but these measures are broadly defined and there is no other mechanism in the rule to ensure specificity. The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and comply with the requirements, and makes it difficult for ICAPCD or others to verify compliance and to enforce the requirements if necessary. The lack of specificity similarly renders it difficult to assess whether the measures constitute BACM level controls. ICAPCD must revise Rule 806 to ensure that unpaved road and traffic area CMPs are enforceable and are implemented at a BACM level or demonstrate why such a rule revision is not necessary. SJVAPCD Rule 4550, for example, relies on an application submittal and approval process to ensure sufficient specificity of the particular measures implemented at each source. Great Basin Unified Air Pollution Control District (GBUAPCD) Rule 502 also has an application submittal and approval process. Alternatively, there may be another mechanism to ensure adequate specificity such as by revising and clarifying ICAPCD's CMP application forms.

c. Border Patrol Roads

Rule 800 Section F.6.c exempts roads owned or operated by BP from Rule 805 requirements that are "inconsistent with BP authority and/or mission." It is not clear what this exemption is intended to address, or how it would be implemented and enforced, particularly because both BP and ICAPCD staff have informally informed EPA that BP does not own or operate any roads in Imperial County. ICAPCD must either remove this exemption or narrow the exemption to specific mission activities and demonstrate that the exemption is minimized and necessary, consistent with BACM requirements.

3. BACM-Related Deficiencies for Agricultural Lands

a. Tilling and Harvesting

Rule 806 Sections E.1 and E.2 list CMPs intended to control emissions from agricultural land preparation and cultivation (including tilling), and harvest activities, but these measures are broadly defined and there is no other mechanism in the rule to ensure specificity. The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and comply with the requirements, and makes it difficult for ICAPCD or others to verify compliance and to enforce the requirements if necessary. The lack of specificity similarly renders it difficult to assess whether the measures constitute BACM level controls. ICAPCD must revise Rule 806 to ensure that tilling and harvesting CMPs are enforceable and are implemented at a BACM level or demonstrate why such a rule revision is not necessary. SJVAPCD Rule 4550, for example, relies on an application submittal and approval process to ensure sufficient specificity of the particular measures implemented at each source. GBUAPCD Rule 502 also has an application submittal and

[6] On August 11, 2004, EPA reclassified Imperial County as serious nonattainment for PM_{10}. 69 FR 48835. Since 2008 has passed, BACM is now required to be implemented as expeditiously as practicable. *Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990).

approval process. Alternatively, there may be another mechanism to ensure adequate specificity such as by revising and clarifying ICAPCD's CMP application forms.

In addition, Rule 806 Section E requires one CMP from the "land preparation and cultivation" category and one CMP from the "harvest" category, while SJVAPCD Rule 4550 requires an additional CMP from the "cropland-other" category. GBUAPCD Rule 502 also requires that one CMP each be selected from the "land preparation and cultivation," "harvest," and the "cropland-other" categories. ICAPCD must similarly require an additional CMP for cropland, or demonstrate why that is not appropriate.

b. Windblown Dust

Windblown dust from non-pasture agricultural lands is also a significant source of PM_{10} that requires BACM independent of agricultural tilling. The CMPs in Rule 806 Section E, however, mainly control emissions by reducing the number of vehicle passes across fields, and sources are not required to select BACM level practices for controlling windblown dust from active or fallow agricultural fields. ICAPCD must revise Rule 806 to require BACM level windblown dust controls. In general, EPA believes that the evaluation of BACM level controls for a particular source or activity should include consideration of U.S. Department of Agriculture (USDA) approved conservation systems and activities. Although these guidelines may not specifically be designed to minimize air pollution, they are intended to be feasible and effective techniques that will reduce windblown dust, and thus would be appropriate measures to consider for BACM for such sources or activities for PM_{10}. SCAQMD Rule 403 provides an example of such controls. Please see Section III.B.4 in our TSD for further discussion of this deficiency.

4. Non-BACM Deficiency

Rule 802 Section D.1 allows the Air Pollution Control Officer (APCO) to set aside controls that might be used instead of water to stabilize surfaces of bulk materials. This discretion allows ICAPCD to approve alternatives to the applicable SIP without following the SIP revision process described in CAA section 110. Moreover, ICAPCD has not demonstrated why such discretion is needed for measures such as covering, enclosing or sheltering material piles. While we prefer removal of the exemption and APCO discretion, SJVAPCD Rule 8031 remedies the enforceability issue by requiring EPA approval.

D. EPA Recommendations To Further Improve the Rules

Our TSD describes additional rule revisions that we recommend for the next time ICAPCD modifies the rules, but are not the basis for disapproval at this time.

III. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the seven inter-related Regulation VIII rules to strengthen the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the seven inter-related Regulation VIII rules under sections 110(k)(3), 110(a) and 189(a)(1)(C) and (b)(1)(B) for the reasons set forth in Section II.C. of this proposed rule. If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies set forth in sections II.C.1 through 3 of this proposed rule within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). The deficiency identified in Section II.C.4 of this proposed rule would not trigger sanctions or a FIP obligation at this time because it does not appear that it is associated with SIP revisions that are required by the CAA.

Note that the submitted rules have been adopted by ICAPCD, and EPA's final limited disapproval would not prevent ICAPCD from enforcing them.

We will accept comments from the public on our proposed limited approval and limited disapproval action for 30 days from publication in the **Federal Register**.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action

proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 10, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–3513 Filed 2–22–10; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2522, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2550, 2551, and 2552

RIN 3045–AA51

Serve America Act Amendments to the National and Community Service Act of 1990

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act ("The Serve America Act" or "SAA"). The Serve America Act reauthorizes and expands national service programs administered by the Corporation for National and Community Service ("the Corporation") by amending the National and Community Service Act of 1990 ("NCSA" or "the Act") and the Domestic Volunteer Service Act of 1973 ("DVSA"). The Corporation publishes this proposed rule to implement changes to the operation of the National Service Trust under the Serve America Act. This proposed rule provides flexibility for exceptions to the 80 percent cost reimbursement requirement for Senior Companion and Foster Grandparent programs based on hardship. In addition, this proposed rule reorders and renumbers certain parts of the existing regulations, adds new definitions, and makes several minor technical edits.

DATES: To be sure your comments are considered, they must reach the Corporation or or before April 26, 2010.

ADDRESSES: You may send your comments electronically through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov.* You may also mail or deliver your comments to Amy

Borgstrom, Docket Manager, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. Members of the public may review copies of all communications received on this rulemaking at *http://www.regulations.gov* or at the Corporation's Washington, DC headquarters.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, *aborgstrom@cns.gov,* TDD 606–3472. Persons with visual impairments may request this rule in an alternate format.

SUPPLEMENTARY INFORMATION:

I. Invitation To Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations on *http://www.regulations.gov* or by contacting the Docket Manager listed in this notice.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact Amy Borgstrom, Docket Manager, Corporation for National and Community Service, *aborgstrom@cns.gov,* TDD 606–3472.

II. Background

On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act). The Serve America Act reauthorizes and expands national service programs administered by the Corporation by amending the NCSA and DVSA. The Corporation engages four million Americans in service each year, including approximately 75,000 AmeriCorps members, 492,000 Senior Corps Volunteers, 1.1 million Learn and Serve America students, and 2.2 million additional community volunteers mobilized and managed through agency programs.

Section 6101 of the Serve America Act authorizes the Chief Executive Officer of the Corporation to issue such regulations as may be necessary to carry out the amendments required under the Act. To fulfill that responsibility, on September 10, 2009, the Corporation issued an interim final rule to implement time-sensitive changes to the Corporation's AmeriCorps State and National, Senior Corps, and Learn and Serve America program regulations. (74 FR 46495). The changes resulting from the interim final rule were required as a result of amendments to the NCSA and DVSA by the Serve America Act, which took effect for most purposes on October 1, 2009.

In that rule, we stated our intention to engage in full notice and comment rulemaking to implement those amendments mandated by the Serve America Act that did not require immediate regulatory action. This rule primarily proposes amendments and additions to existing regulations regarding the National Service Trust, including limitations on education award receipt, the available uses of education awards, eligibility to receive an education award, eligibility to transfer an education award, and the amount of an education award. This proposed rule also addresses the limitation on the number of terms an individual may serve in an AmeriCorps State and National program. The proposed rule allows flexibility in managing match requirements for Senior Companion and Foster Grandparent programs facing hardship. Finally, this rule makes several technical corrections inadvertently omitted from the interim final rule, including an amendment to the provision on pre-approval of Subtitle C formula programs, amendments to the AmeriCorps State and National selection criteria, and an amendment to include a reference to the Department of Education's new Public Service Loan Forgiveness Program. An overview of specific changes for each program is set out below.

III. Proposed Rule

Definitions (§§ 2510.20, 2525.20)

The National Service Trust is an account in the U.S. Treasury authorized to disburse education awards to national service participants. Prior to passage of the Serve America Act, the Corporation was authorized to disburse one type of education award from the National Service Trust—a national service education award, also known as a Segal AmeriCorps education award, available upon successful completion of a term of service in an approved AmeriCorps position. An "approved AmeriCorps position" is one of the positions described in Sec. 123 of the Act, including a position in AmeriCorps State and National, AmeriCorps NCCC, AmeriCorps VISTA, and the newly authorized ServeAmerica Fellowship program.

The Serve America Act authorizes two new types of education awards: (1) A Silver Scholar education award of $1,000, available upon successful completion of a term of service in an approved Silver Scholar position; and (2) a Summer of Service education award of between $500 and $750, available upon successful completion of a term of service in an approved Summer of Service position. To align with the amended statute, this proposed rule amends § 2525.20 by adding three separate definitions for "AmeriCorps education award," "Silver Scholar education award," and "Summer of Service education award."

Each of these awards is based upon successful completion of a term of service in an approved position. For a position of any type to be considered "approved," the Corporation must have agreed to provide a corresponding education award upon successful completion of a term of service in that position. This proposed rule amends § 2510.20 by adding definitions to clarify that in order for a Summer of Service or Silver Scholar position to be considered approved, it must be approved by the Corporation for the receipt of a Silver Scholar or Summer of Service education award, respectively.

There are different service requirements for each type of education award. A term of service in an approved AmeriCorps position is for at least 1,700 hours during a period of not more than one year, with options for part-time or reduced part-time terms of service, as defined in § 2522.220, for AmeriCorps State and National members. A term of service in an approved Silver Scholar position must be for at least 350 hours during a period of one year. A term of service in an approved Summer of Service position must be for at least 100 hours "during the summer months." To clarify that what constitutes a term of service will vary depending upon the program, this proposed rule amends the definition of "term of service" in § 2525.20 to align with the NCSA by providing separate descriptions for terms of service in approved AmeriCorps, Silver Scholar, and Summer of Service positions.

As stated above, a Summer of Service education award will generally be $500. However, the NCSA authorizes the Corporation to establish a Summer of Service award of $750 for "economically disadvantaged youth." The Corporation proposes in this rule to define "economically disadvantaged youth" for the purposes of the larger Summer of Service education award as a child who is eligible for a free lunch and breakfast under the Richard B. Russell National School Lunch Act. This proposed rule amends § 2525.20 to add this definition.

Eligibility To Receive an Education Award (§ 2526.10)

The Serve America Act created two new types of education awards: Silver Scholar education awards and Summer of Service education awards, for $1000 and $500 respectively, available upon successful completion of an approved Silver Scholar or Summer of Service position. This proposed rule amends § 2526.10 to include individuals who successfully complete terms of service in approved Silver Scholar or Summer of positions as eligible to receive an education award from the National Service Trust.

Previously, the list of eligibility criteria to receive an education award in § 2526.10 has reflected the eligibility criteria to serve in AmeriCorps State and National, AmeriCorps NCCC, and AmeriCorps VISTA, including age and education criteria that would necessarily exclude individuals in Summer of Service positions, which are available for "youth who will be enrolled in any of grades 6 through 12 at the end of the summer" (42 U.S.C. 12563(c)(8)). To align with the amended statute, this proposed rule amends § 2526.10 to defer to the eligibility criteria of individual programs for program-specific criteria.

Under the proposed rule, for an individual to be eligible to receive an education award, the organization responsible for the individual's supervision must certify: (1) That the individual met the applicable eligibility requirements for the approved national service position, approved Silver Scholar position, or approved Summer of Service position, as appropriate; (2) that the individual successfully completed the term of service in the AmeriCorps, Silver Scholar, or Summer of Service program; and (3) that the individual is a citizen, national, or lawful permanent resident alien of the United States.

Successful Completion of a Term of Service (§ 2526.15)

Sec. 146 of the NCSA directs the Corporation to determine a process by which an organization responsible for the supervision of a national service participant may determine whether the participant successfully completed a term of service. This proposed rule adds a new § 2526.15 specifying the process for determining whether an individual successfully completed a term of service for the purposes of receiving an education award from the National Service Trust. Under this rule, organizations supervising AmeriCorps State and National participants would continue to use the existing process detailed at § 2522.220(d). For all other programs, the organization would be required to conduct an end-of-term evaluation for each participant to determine whether: (1) The individual completed the required number of service hours for the respective term of service; (2) the individual performed satisfactorily on assignments, tasks, or projects; and (3) the individual met any other performance criteria as communicated to the member by the organization. What is considered "satisfactory performance" is within the discretion of the program. While the Corporation encourages programs to keep records of end-of-term evaluations of member performance for their own purposes, for the purpose of this requirement certification that an individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation. A certification will not, however, suffice as documentation of hours served.

Release for Compelling Personal Circumstances (§§ 2526.20–25)

Sec. 147 of the NCSA authorizes the Corporation to make education awards in five different amount categories: (1) An amount for successful completion of a full-time approved national service position; (2) an amount for successful completion of a part-time approved national service position; (3) an amount for partial completion of service, available upon release for compelling personal circumstances from an approved national service position; (4) an amount for a Silver Scholar education award for successful completion of an approved Silver Scholar position; and (5) an amount for a Summer of Service education award for successful completion of an approved Summer of Service position. Partial awards are described only in the context of release for compelling personal circumstances from an *approved national service position.* In describing types of service positions in Sec. 146, the Act distinguishes between *approved national service positions* (which are described in Sec. 123 to include AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and ServeAmerica Fellows), *approved Silver Scholar positions,* and *approved Summer of Service positions,* and does not provide for a pro-rated award for a release for compelling personal circumstances from an approved Silver Scholar or Summer of Service position. In summary, there is no authority for a partial award for a release for compelling personal circumstances from a Silver Scholar or Summer of Service position.

This proposed rule amends § 2526.20 and adds a new § 2526.25 to clarify that partial awards will not be available for individuals who are released early from Silver Scholar or Summer of Service positions, even for compelling reasons.

This proposed rule also amends § 2526.20 to reflect the statutory requirement that an individual must have performed satisfactorily prior to being released for compelling personal circumstances in order to receive a partial education award.

Limitation on Amount of Award Disbursed to Institution of Higher Education (§§ 2528.30–40)

Prior to the effective date of the Serve America Act, under Sec. 148(c)(6) of the NCSA, the Corporation's disbursement from an individual's education award for any period of enrollment at an institution of higher education could not exceed the difference between that individual's cost of attendance for that period of enrollment and the sum of (1) the individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act and (2) the individual's veterans' benefits as defined under section 480(c) of the Higher Education Act. The Serve America Act amended Sec. 148(c)(6) to no longer consider an individual's veterans' benefits in this manner. This proposed rule amends §§ 2528.30 and 40 to align with amended Sec. 148(c)(6) by removing any consideration of an individual's veterans' benefits when determining the maximum amount of the individual's education award that may be disbursed to an institution of higher education.

Use of Education Award for a Program of Education Approved by the Secretary of Veterans Affairs (§§ 2528.10, 60–80)

The Serve America Act amended Sec. 148 of the NCSA to add a fifth available

use for an education award. Under the amended law, the education award is available "to pay expenses incurred in enrolling in an educational institution or training establishment that is approved under chapter 36 of title 38, United States Code, or other applicable provisions of law, for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary of Veterans Affairs." (42 U.S.C. 12604(a)(4)). This proposed rule amends § 2528.10 to add this use to the list of available uses, and adds rules on the process for using the award for this purpose. Benefits offered under chapter 36 of title 38, U.S.C., were authorized under the Montgomery G.I. Bill and the Post 9/11 G.I. Bill, and will be referred to hereinafter as "G.I. Bill education benefits." Likewise, courses and programs approved under that chapter will be referred to as "G.I.-approved."

This proposed rule would require that the institution or training establishment at which an individual requests to use an education award certify under penalty of law that the amount requested would be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training program offered by that institution or training establishment, and certify under penalty of law that the course or program for which the individual is requesting to use the education award has been and is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs. The Department of Veterans Affairs is the agency responsible for approving courses or programs of education under chapter 36 of title 38, U.S. Code, and the Corporation defers to the decisions made by the State approving agencies and the Secretary of Veterans Affairs regarding approving—or withdrawing approval—of a program of education; if an institution or establishment cannot verify that a course or program of education has received the requisite approval, the Corporation will not disburse the funds to the school.

Unlike G.I. education benefits, which may be disbursed directly to an individual, under this proposed rule, the education award would be disbursed directly to the educational institution or training establishment.

If an individual for whom the Corporation has disbursed an education award withdraws or fails to complete the period of enrollment at an educational institution or training establishment in a program of education approved by the Secretary of Veterans Affairs, this proposed rule would require the educational institution or training establishment to provide a pro-rated refund to the Corporation.

Payment of Accrued Interest (2529.10)

This proposed rule amends § 2529.10, which currently provides for interest forbearance to individuals serving in approved AmeriCorps positions, to clarify that individuals who successfully complete terms of service in approved Silver Scholar positions may also be eligible for payments of interest accrued on qualified student loans while serving. The proposed rule does not include Summer of Service positions, as Summer of Service positions are reserved for rising 6th through 12th graders who, having not yet enrolled in an institution of higher education, will not yet have incurred qualified students loans.

The Serve America Act also amended Sec. 123 by expanding the list of positions considered to be approved national service positions to include "a position involving service in the ServeAmerica Fellowship program." The term "approved national service position" is used interchangeably with the term "approved AmeriCorps position." Thus, although this proposed rule does not explicitly amend § 2529.10 to include ServeAmerica Fellows, they are incorporated by definition.

Amount of AmeriCorps Education Award (§ 2527.10)

Upon successful completion of a term of service in an approved AmeriCorps position, including positions in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and Serve America Fellows, an individual is eligible to receive an AmeriCorps education award from the National Service Trust. Prior to the passage of the Serve America Act, the amount of a full-time AmeriCorps education award was set in law at $4,725.

The Serve America Act amended Sec. 147 of the NCSA by changing the amount of a full-time national service education award to be "equal to the maximum amount of a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1071a) that a student eligible for such Grant may receive in the aggregate * * * for the year for which the national service position is approved by the Corporation." This proposed rule amends § 2527.10 to conform to the changes in the NCSA in the amount of the full-time award.

The amount of the Pell Grant upon which AmeriCorps education awards will be based may change each year, thus, the amount of an AmeriCorps education award may also change annually. To determine the amount of an AmeriCorps education award, the Corporation will use the amount of the Pell Grant as of October 1 (the first day of the Federal fiscal year) in the fiscal year in which the national service position is approved. For example, if a national service position is approved in September of 2010, the amount of the education award will be based on a full-time amount of $5,350—the amount of the Pell Grant as of October 1, 2009 (the first day of fiscal year 2010).

The trigger date for determining the amount of an education award for a particular national service position is the date that position is *approved*—not the date the individual begins serving in a national service position. Not all positions that *begin* in a fiscal year will receive an education award based on the amount of the Pell Grant in that fiscal year.

In accordance with the national service laws, funding for education awards are obligated on a different schedule for AmeriCorps VISTA, AmeriCorps NCCC, and AmeriCorps State and National. What follows is a detailed discussion on how the approval date for a national service position is determined for the purposes of establishing the amount of an education award.

For AmeriCorps VISTA, a position is considered to be approved at the time the Corporation enters into an enforceable agreement with an individual, signified by the individual's taking the VISTA oath of service. (42 U.S.C. 4954(c)). For an AmeriCorps VISTA position, the education award amount is equal to the amount of a Pell Grant on October 1 of the fiscal year in which the VISTA takes the oath of service. For example, a VISTA who takes the oath on any date between October 1, 2009, and September 30, 2010, is eligible for a full-time award amount of $5,350—the amount of the Pell Grant as of October 1, 2009.

For AmeriCorps NCCC, a position is considered to be approved at the time the Corporation enters into an enforceable agreement with an individual, signified by the individual's signing of an AmeriCorps NCCC member agreement. For an AmeriCorps NCCC position, the education award amount will be equal to the amount of a Pell Grant on October 1 of the fiscal year in which the AmeriCorps NCCC member signs the member agreement. Therefore, an individual who signs an

AmeriCorps NCCC member agreement on any date between October 1, 2009, and September 10, 2010, will receive an award based on a full-time award amount of $5,350—the amount of the Pell Grant as of October 1, 2009.

For AmeriCorps State and National, by law, a position is considered to be approved at the time the Corporation executes a grant used to support the AmeriCorps member—*not* the date an AmeriCorps member takes an oath, signs an agreement, or begins service. As discussed above, the day an individual enters service in AmeriCorps NCCC or AmeriCorps VISTA may make a significant difference in the amount of the education award, as the award for a position will likely be larger if the individual takes an oath of office or signs an agreement on October 1, as opposed to September 30. The same will not be true for AmeriCorps State and National members. AmeriCorps State and National grants are generally made during the Spring and Summer, *i.e.,* in the latter half of a fiscal year. As a result, unlike AmeriCorps NCCC and AmeriCorps VISTA members who are eligible for the new amount of the award as of October 1, the earliest point at which an AmeriCorps member may begin serving in a position funded by those grants may be closer to the end of a fiscal year.

As an example, if an AmeriCorps State program receives a grant on August 1, 2010, and enrolls a member using fiscal year 2010 grant funds on August 3, 2010, that member will receive an education award based on a full-time amount of $5,350—the amount of the Pell Grant on October 1, 2009, the first day of the fiscal year in which the August 2010 grant was made. If the program then enrolls another member on October 10, 2010, that member will also receive an education award based on the $5,350 amount—even though at that point a new fiscal year has begun, and the Pell Grant for fiscal year 2011 may have increased as of October 1, 2010. The determining factor is that the member position was approved by the Corporation in fiscal year 2010.

Further, unlike an AmeriCorps NCCC or AmeriCorps VISTA member, whose approval date will closely correlate with the day the individual begins service, it is possible for an AmeriCorps State and National member beginning service in one fiscal year to be supported with funds from a grant made in a prior fiscal year. Therefore, it is possible for two AmeriCorps members starting service on the same day to be supported by two different grant awards made in two different fiscal years, resulting in two different approval dates and two different education award amounts.

For example, a program might receive a continuation grant on August 1, 2011, but still have grant funds carried over from a grant made in 2010. If the program enrolls two members on August 1, 2011—one supported with the 2010 grant and one supported with the 2011 grant—the one supported with the 2010 grant will be eligible for an award based on a full-time award of $5,350—the amount of the Pell Grant on October 1, 2009, the first day of the fiscal year in which the 2010 grant was made. The member who is being supported with 2011 funds will be eligible for an award based on whatever the amount of the Pell Grant is on October 1, 2010.

The Corporation recognizes the possibility for confusion among AmeriCorps State and National members, who, unlike AmeriCorps NCCC and AmeriCorps VISTA members, will not be able to rely on their service start dates to figure out the amount of the award they are eligible to receive. To reduce confusion, it is essential for AmeriCorps programs—particularly those with AmeriCorps State and National members—to clearly communicate to each member, prior to the commencement of service, the amount of the education award the individual will receive upon successful completion of the term of service. Beginning with grants made in 2010, AmeriCorps State and National grant provisions will direct grantees to specify the amount of the education award of the funds being used to support the position in the member service agreement.

It is important to remember that the Serve America Act went into effect on October 1, 2009. All positions approved prior to that date are eligible for awards based on a full-time amount of $4,725. This includes all AmeriCorps State and National positions, even those that began after October 1, 2009, since no AmeriCorps State and National positions have been approved with fiscal year 2010 funds to date.

To learn more about the amount of the education award and how it is determined, visit the AmeriCorps Web site at *http://www.americorps.gov/for_individuals/benefits/benefits_ed_award.asp.*

Amount of Silver Scholar and Summer of Service Education Awards (§ 2527.10)

As previously discussed, the Serve America Act created two new types of education awards: Silver Scholar education awards and Summer of Service education awards. This proposed rule amends § 2527.10 to include the Silver Scholar education award of $1000, available upon successful completion of a term of service of at least 350 hours in a Silver Scholar position.

This proposed rule also amends § 2527.10 to include the Summer of Service education award of $500, available upon successful completion of at least 100 hours in a Summer of Service position. The Corporation may authorize a Summer of Service education award of $750 if the participant is economically disadvantaged. In order to authorize the increased award, the Corporation must receive a certification from the school with which the participant served that the participant meets the definition of "economically disadvantaged," defined in this rule as a child that is eligible for a free lunch and breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

Pro-rated education awards for an early release for compelling personal circumstances from a Silver Scholar or Summer of Service position are not available. If an individual fails to complete either type of term for any reason, the individual will not receive any award. And unlike the AmeriCorps education award described in the previous section, Silver Scholar and Summer of Service education awards will not vary in amount from one year to the next.

Limitation on Value of Education Awards Received (§§ 2526.50–55)

Prior to the passage of the Serve America Act, the national service laws limited individuals to receiving an education award "only on the basis of the first and second * * * terms of service." A term of service includes full-time, part-time, or less-than-part-time terms, terms in which the person served at least 15 percent of the term of service, and terms for which an individual was released for misconduct regardless of the amount of time served. Terms range in service hour requirements from 300 hours to more than 1,700 hours, but despite the contrast in the level of commitment required or the service opportunity presented, all terms were previously considered of equal value for the purposes of limiting the receipt of education awards.

The Serve America Act amended the national service laws to no longer limit the receipt of education awards based upon the number of terms served, but rather place the limit on the value of education awards received. Sec. 146(c) now states: "An individual may not receive, through national service educational awards and silver scholar

educational awards, more than an amount equal to the aggregate value of [two] such awards for full-time service."

The amended law allows for an individual to earn more than two education awards, so long as the aggregate value of all awards received does not exceed the aggregate value of two full-time national service education awards. Significantly, the law does not create an entitlement to receive the aggregate value of two full-time awards; rather, it prohibits an individual from receiving more than the aggregate value of two full-time awards. This proposed rule amends § 2526.50 to align with the amended statutory language.

As previously discussed, the amount of a full-time education award is now tied to the amount of a Pell Grant in the year the position is awarded, and is likely to change each year. The Corporation does not interpret the amended statute to suggest that the *value* of two full-time education awards for the purposes of this section is equal to the dollar amount of two full-time awards and would thus similarly change on an annual basis, providing a potentially unlimited number of service opportunities and education awards. Nor does the Corporation interpret this change as a means of ensuring that all national service participants receive an identical amount of money. Rather, the Corporation interprets the change in focus from the number of terms served to the value of education awards received as a means of addressing the inequity of limiting individuals to two terms of service when not all terms offer an equivalent service opportunity. In other words, for the purposes of the limitation on education award receipt, value is distinct from amount.

The Corporation considers an education award to be the counterpart to successful completion of a term of service, and while the amount of that award might change, the service opportunity offered by a particular term of service is constant. The Corporation interprets the "value" of a full-time education award to be representative of the service opportunity upon which it is based, therefore, a limitation of two full-time education awards can be understood as a limitation of two full-time service opportunities.

In order to attribute a value to an award received on the basis of a static service opportunity in an environment in which the award amount may fluctuate annually, the Corporation proposes to measure the *value* of any award amount relative to the amount of a full-time award in a given year. In this rule, the Corporation proposes, for the purposes of this section, that the *value* of an education award is equal to the actual amount of the education award received divided by the amount of a full-time education award in the year the AmeriCorps or Silver Scholar position upon which the award is based was approved. Using this calculation, every award received will be considered to have a *value* between 0 and 1. Although the *amount* of a full-time award may change, the *value* of a full-time award will always be equal to 1.

$$\text{Value of education award received} = \frac{\text{Amount of award Received}}{\text{Amount of full-time award in fiscal year in which position upon which award is based was approved}}$$

For example, an individual who completed a part-time position approved in 2009 received an education award of $2362.50. The value of this award is the amount received, $2,362.50, divided by $4,725, the amount of a full-time award in the year the position was approved, or .5. Another individual completes a part-time position approved in 2010 and receives an education award of $2,675. The value of this award is the amount received, $2,675, divided by $5,350, the amount of a full-time award in the year the position was approved, or .5. Using this calculation, the value of an award received for part-time service will always be equal to .5.

If an individual leaves a term of service for compelling personal circumstances and receives a pro-rated award, the value attributed to that award will be based on the amount actually received. For example, an individual was released for compelling personal circumstances from a full-time position approved in 2009 after serving 800 hours, and received a pro-rated award of $2,223.52. The value of this award is the amount of the award received, $2,223.52, divided by, $4,725, the amount of a full-time award in the year the position was approved, or .47. Another individual was released for compelling personal circumstances from a full-time position approved in 2010 after serving 800 hours, and received a pro-rated award of $2,517.64. The value of this award is the amount of the award received, $2,517.64, divided by, $5,350, the amount of a full-time award in the year the position was approved, or .47.

If an individual exits a term for cause and does not receive an education award, the amount received will be $0, and therefore no value will be attributed to the individual for purposes of this section. However, an exit for cause will have an impact on the individual's eligibility to serve subsequent terms of service. A term exited for cause is considered a term of service for the purposes of term limitations for individual programs. For example, if an individual has already served one term of service in AmeriCorps NCCC, and exits a second term in AmeriCorps NCCC for cause, the individual has exhausted the two terms of service one may serve in AmeriCorps NCCC. Additionally, if an individual is released for cause from an approved AmeriCorps position (including positions in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and Serve America Fellows), and the program determines in the end-of-term evaluation that the individual served unsatisfactorily, the individual may not be permitted to serve a subsequent term in an approved AmeriCorps position.

For the purpose of transferred awards (discussed further in the section in this preamble on transfer), this rule proposes that the value of the award received by a transferee will be the actual amount of the award received divided by the amount of a full-time award in the year the position for which the transferring individual received the award was approved. For example, if an individual receives an education award based on a term of service approved in 2010, and later transfers $1,000 of that award to a grandchild, the grandchild will be considered to have received an award value of .19, the result of dividing the amount received, $1,000, by the amount of a full-time award in 2010, $5,350. If the transferring individual revokes all or part of an award, this rule proposes that the value considered to be received by the designated individual will be decreased accordingly. An individual who receives the aggregate value of two full-time awards through transferred awards will not be eligible to enroll in a term of service the successful completion of which would result in the receipt of an education award.

Under the proposed rule, an award is considered to be received at the time it becomes available for an individual's use, and the fact that an individual does not use an award does not diminish its value for the purposes of this section. In addition, under the proposed rule an individual who transfers an award will still be considered to have received the award, and the value of the award for the purposes of this section will not be decreased by the amount the individual transfers to a designated individual. For example, if an individual successfully completes two full-time terms of service, and the individual then transfers both full-time awards to a child, both the child and the transferring individual will be considered to have received two full-time awards.

The proposed rule states that an individual may receive no more than the aggregate value of two full-time education awards. In this rule, the Corporation proposes that the aggregate value of awards received will be equal to the sum of the value of each national service education award received (awards received from terms of service in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, or ServeAmerica fellowships), including partial awards, the value of each Silver Scholar award received, and the value of each transferred award received. The calculation of the aggregate value does not include Summer of Service education awards, as these are explicitly excluded by law.

For example, an individual served a full-time term in 2008 and received an award of $4,725. The same individual served a part-time term in 2009 and received an award of $2,362.50. The individual enrolls in a minimum-time term in 2010 and receives an award of $1,132.60. The value of the first award is 1 ($4,725 divided by $4,725), the value of the second award is .5 ($2,362.50 divided by $4,725), and the value of the third award is .21 ($1,132.60 divided by $5,350). The aggregate value of awards received is 1.71 (1 + .5 + .21).

While the amended law separates the previously indivisible limitations on number of terms served and education awards received, the limitation on education awards an individual is eligible to receive may impact an individual's eligibility to enroll in a subsequent term of service. The proposed rule states that an individual may not enroll in a subsequent term of service if successful completion of that term of service would result in receipt of an education award the value of which, when added to the aggregate value of awards previously received, would be greater than 2. This limitation would not, however, prevent an individual from enrolling in a term of service for which the individual chooses to waive receipt of an education award, including a VISTA term of service for which the individual elects to receive an end-of-service stipend.

Using the example above, if an individual had received an aggregate value of 1.71 awards in the past, that individual may be eligible to enroll in a quarter-time, minimum-time, reduced part-time, or Silver Scholar position, but would not be eligible to enroll in a part-time or full-time position, since the value of a part-time award, .5, plus 1.71, is greater than 2.

The Corporation has received questions regarding whether an individual could enroll in a term of service, and exit for compelling personal circumstances in order to receive a pro-rated award that, when added to other awards received, would not exceed the aggregate value of two full-time education awards. Exiting in order to receive an education award of a particular amount would not be considered to be a compelling personal circumstance. The proposed rule is based upon the assumption that every individual who enrolls in a term of service does so with the intention of successfully completing that term. Therefore, an individual would not be permitted to enroll in a term with the intention of leaving early in order to receive a pro-rated award of a lesser value.

The Corporation has received questions about whether awards received prior to the effective date of the Serve America Act will be included in determining the value of education awards received. The national service laws, as amended by the Serve America Act, do not differentiate between awards received prior to the effective date. All awards earned in the past will have a value attributed to them for the purposes of this section. Thus, under the proposed rule, if an individual has received two full-time education awards in the past, that individual is not eligible to receive another education award, and may not enroll in a term of service that will result in the receipt of an education award.

Separate from the limitation on education award receipt, individual Corporation programs—AmeriCorps NCCC, AmeriCorps VISTA, and AmeriCorps State & National—have their own term limitations. Each full-time term, part-time term, and term for which the individual leaves after serving 15% or for misconduct is considered one term for the purposes of these program-specific term limitations. Thus, if an individual serves two terms of service in AmeriCorps NCCC and exits from one for compelling personal circumstances, that individual may be able to enroll in a minimum time AmeriCorps State and National or AmeriCorps VISTA position, but will not be able to enroll in another AmeriCorps NCCC term because the individual has already met the term limit for that program. Because the limit on the value of education awards an individual may receive necessarily will limit the number of terms an individual will be able to serve across the Corporation's AmeriCorps and Silver Scholar programs, the Corporation does not intend to set an overall limit for *number* of terms across programs at this time.

Transfer of Education Awards (Part 2530)

The Serve America Act amended Subtitle D of title I of the NCSA to authorize individuals to transfer an education award, with limitations on who can transfer an award, and who can receive a transferred award. By statute, to transfer an award, an individual must: (1) Have successfully completed a term of service in an approved AmeriCorps State and National or Silver Scholar position; and (2) have been age 55 or older before beginning that term of service. To receive an award, an individual must: (1) Be designated by a qualifying transferring individual; (2) be the child, grandchild, or foster child of the transferring individual; and (3) be a citizen, national, or lawful permanent resident alien of the United States. The effective date of this provision was October 1, 2009; only individuals beginning service on or after that date will be eligible to transfer an education award.

Sec. 148(f) specifies that the "designated individual," meaning the child, grandchild, or foster child designated by the transferring individual to receive the award, may use the award for the purposes described in paragraphs (b), (c), and (d) of that section—*i.e.,* to repay qualified student loans, to pay for current educational expenses at an institution of higher education, or to pay expenses incurred in an approved school-to-work program. The school-to-work program, authorized under the School-to-Work Opportunities Act of 1994, sunsetted in 2001, thus, in practice, the designated individual would be able to use the award only for current educational expenses or to repay qualified student loans. The NCSA does not extend the

use of the award to pay expenses incurred in enrolling in an institution or training establishment approved under the G.I. Bill to designated individuals, nor does it permit designated individuals to receive interest forbearance payments as described in Sec. 148(e).

This section of the NCSA also permits a transferring individual to, "on any date on which a portion of the education award remains unused, modify or revoke the transfer of the educational award with respect to that portion."

This proposed rule adds a new Part 2530 on transfer, including rules reflecting statutory guidelines, and details on the processes for requesting both transfers and revocations of transferred awards. The NCSA also includes a provision requiring the Corporation to "establish requirements to prevent waste, fraud, or abuse in connection with the transfer of an educational award and to protect the integrity of the educational award under this subsection." This proposed rule includes several measures intended to protect a transferred education award from waste, fraud, or abuse.

First, as part of the process for the transferring individual to request the transfer and the process for the designated individual to accept the transfer, the proposed rule would require both the transferring individual and the designated individual to provide a certification under penalty of law that each meets the criteria to transfer, or receive, a transferred award. As with all certifications, an individual may be asked to produce verifying documentation.

Second, the proposed rule would limit an individual to making a single transfer of an education award that is attributable to a single term of service, thereby limiting the opportunity for waste, fraud, or abuse. In order to transfer awards to more than one designated individual, the transferring individual will need to earn awards for more than one term of service. Under no circumstance may an individual partition a single award attributable to completion of a single term of service to multiple designated individuals. Notably, this proposed rule would permit an individual to transfer all or a portion of an award to a designated individual, thus, the transferring individual could keep a portion of the award for his or her use, and transfer a portion of the award to a designated individual.

As stated above, a transferring individual also has the authority to revoke any unused portion of an education award from a designated individual. As another measure to prevent waste, fraud, or abuse, and in line with the Corporation's intent to limit individuals to a single transfer from each award, a transferring individual would not, as a general rule, be permitted to re-transfer a revoked award to another individual.

The proposed rule includes an exception to this general rule for those situations in which the Corporation considers the award to have been revoked for good cause, as demonstrated by the transferring individual. For example, if a transferring individual revokes the full amount transferred upon the death of a designated individual, the Corporation would permit the transferring individual to re-transfer the award in whole or in part.

This proposed rule also includes several clarifying provisions. As discussed in the section in this rule on the limitation on the value of education awards an individual may receive, the NCSA prohibits an individual from receiving more than the aggregate value of two education awards. Under this proposed rule, an award would be considered to be "received" at the time it becomes available for an individual's use. The fact that an individual transfers an award to a designated individual would not decrease the value of awards the individual would be considered to have received. Transferred awards a designated individual receives would also be considered when calculating the aggregate value of awards received.

For example, if an individual receives two full-time awards, and transfers both awards to a child, both the transferring and designated individual will be considered to have received the aggregate value of two full-time awards, and neither will be eligible to receive additional AmeriCorps or Silver Scholar awards from the National Service Trust. Notably, because Summer of Service education awards are not included in the calculation of aggregate value of education awards received, a designated individual could still receive Summer of Service education awards even if the designated individual had already received the aggregate value of two full-time education awards. As discussed in the section on calculating the value of an education award, a transferred award would have a value based on the amount of a full-time education award in the year the position on which the transferring individual's award was based was approved.

Finally, under the national service laws, an individual has seven years from the date the individual completes a term of service upon which an award is based to use an award, and a designated individual receiving a transferred award has ten years from the date the term of service is completed to use the award. For example, if an individual receives an award for a term completed in 2010, and transfers the award five years after receiving the award, the designated individual would have five years to use the award. In accordance with these statutory time frames, the proposed rule permits an individual to revoke an award at any point prior to its use, but the individual may only use a revoked award for his or her use if the award has not expired. For example, if an individual received an award for a term completed in 2010, transferred the award five years after receiving the award, and then revoked the unused portion six years after receiving the award, the transferring individual would have only one year to use the award. If, however, the transferring individual had revoked the award eight years after it was originally earned, the award would expire immediately upon revocation, because although the award had not yet expired for use by the designated individual, it would have expired for the transferring individual a year earlier.

Periods of Availability for Silver Scholar, Summer of Service, and Transferred Education Awards (§ 2526.40)

Under Sec. 146 of the NCSA, the period of availability for a Silver Scholar education award is seven years from the date the individual completes a term of service. The period of availability for a Summer of Service education award is ten years from the date the individual completes the term of service. Individuals who receive a transferred award may use the award within ten years of the date the transferring individual completes the term of service that is the basis for the award—not the date the designated individual receives the transferred award. For example, if an individual transfers an award five years after the date the individual completed the term of service, the designated individual would have five years to use the award—ten years from the date the transferring individual completed the term of service. This proposed rule amends section § 2526.40 to include periods of availability for Silver Scholar, Summer of Service, and transferred education awards.

Similar to national service education awards, Sec. 146 authorizes the Corporation to grant an extension to the period of availability for a Silver Scholar education award, a Summer of Service education award, or a

transferred award if the individual requesting the extension "was unavoidably prevented" from using the education award or if the individual "performed another term of service in an approved national service position, approved summer of service position, or approved silver scholar position during that period."

The ten year period of availability for transferred education awards has raised questions about whether extensions will be granted if a designated individual is still too young to use an award by its expiration date. The NCSA does not specify a minimum age for the designated individual. Thus, if an individual transfers an award to a grandchild who was four years old at the time the individual completed the term of service that was the basis of the award, the ten year period of availability will expire when the child is fourteen. It is unlikely that, at that time, the child would have had an opportunity to use the education award, thus, the award would expire unused.

Sec. 148(f) of the NCSA directs the Corporation to "establish requirements to prevent waste, fraud, or abuse in connection with the transfer of an educational award and to protect the integrity of the educational award." To permit extensions for a designated individual who is too young to use an award would mean, in some cases, extensions for up to nine years beyond the original expiration date—nearly twice the statutory period of availability. The longer the period of availability, the greater the risk of fraud, waste, or abuse. Further, Congress selected ten years as a reasonable period of availability for a transferred award. Based upon these considerations, this proposed rule specifies that an individual who is unable to use an education award as a result of being too young will not be considered to be unavoidably prevented from using the education award. Individuals wishing to transfer an award will be reminded at the time they request a transfer that while there is no minimum age for a designated individual, extensions based on age will not be granted.

Certifications of Successful Completion of Terms of Service (§ 2626.10)

The Serve America Act amended the NCSA by adding a new section 146A, which imposes a requirement that a national service program certify under penalty of law that an individual successfully completed an agreed-upon term of service to be eligible to receive an education award from the National Service Trust. Specifically Sec. 146A(a) provides that, in making disbursements from the National Service Trust, the Corporation is authorized to act on the basis of certifications that individuals who served in approved AmeriCorps positions, approved Summer of Service positions, or approved Silver Scholar positions, successfully completed the term of service required to be eligible for an education award. These certifications must be made by the entity which selected the individual to serve in the position, and supervised the individual's performance of their service. This proposed rule implements Sec. 146A(a) by including the certification requirement in the determination of who is eligible to receive an education award under § 2526.10(a)(2)(A), (C), and (D).

Effect of Erroneous Certifications of Successful Completion of Terms of Service (§ 2526.70)

Under Sec. 146A(b) of the NCSA, if the Corporation finds that a certification made under Sec. 146A(a) is erroneous or incorrect, the Corporation shall assess a charge against the national service program which made the certification. The charge is to be assessed for the amount of any payment which the Corporation has or may make from the National Service Trust based on the erroneous certification. In assessing the amount of a charge, the Corporation is to consider the full facts and circumstances surrounding the erroneous or incorrect certification.

This proposed rule implements Sec. 146A(b) and specifies that any Corporation determination in regard to a charge under § 2526.70 will not preclude the Corporation from taking any other actions which may be warranted under other applicable authorities, such as the Program Fraud Civil Remedies Act.

Public Service Loan Forgiveness and AmeriCorps (§ 2526.20)

On September 27, 2007, President Bush signed the College Cost Reduction and Access Act of 2007 (Pub. L. 110–84) into law. The CCRAA created the Public Service Loan Forgiveness Program. This program offers forgiveness for outstanding Federal Direct loans for those individuals who make 120 qualifying payments after October 1, 2007, while working full-time in a "public service job." In the Department of Education's implementing rules, "public service job" has been defined to include "serving in a full-time AmeriCorps * * * position." (34 CFR 685.219(c); 73 FR 63527, Oct. 23, 2008). "AmeriCorps position" as defined in that section would include full-time service in AmeriCorps State and National, AmeriCorps NCCC, AmeriCorps VISTA, and ServeAmerica Fellowships.

Generally, an individual cannot receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service. For example, the law authorizing the Teacher Loan Forgiveness Program (TLFP) explicitly states that "no borrower may, for the same service, receive a benefit under this [program] and subtitle D of title I of the National and Community Service Act of 1990." (20 U.S.C. 1078–10(g)(2)). Thus, an AmeriCorps member serving in a teacher corps program would have to choose whether to count the service year towards TLFP or AmeriCorps, but would not be able take both benefits for the same period of service.

The Public Service Loan Forgiveness Program is an exception to this general rule. Service performed by an individual serving in a full-time AmeriCorps position may be credited to both an education award and Public Service Loan Forgiveness.

This rule amends § 2526.60 to include an exception to the general prohibition on an individual's receiving an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the Public Service Loan Forgiveness Program.

For more information on qualifying for Public Service Loan Forgiveness while serving in AmeriCorps, please visit: *http://www.nationalservice.gov/for_organizations/highered/ccraa.asp.*

Term Limits for AmeriCorps State and National (§ 2522.235)

AmeriCorps State and National is the national service program funded under subtitle C of title I of the NCSA. Prior to passage of the Serve America Act, Sec. 140(h) of the NCSA included a limitation that no program could use any Federal funds to support an individual during a third term of service in an AmeriCorps State and National position. The Serve America Act removed Sec. 140(h) of the NCSA, thereby eliminating the statutory limitation on the number of terms in which one could be supported with Federal funds while serving in AmeriCorps State and National position. The Serve America Act amended Sec. 146(c) by changing the limitation from receiving awards for the first two terms of service to receiving up to the value of two full-time education awards. As discussed in the section on the limitation of education award receipt, these amendments now give the

Corporation the flexibility to support a single individual for more than two terms of service in less-than-full-time terms. The amendments do not guarantee an individual may serve more than two terms of service, nor do they direct the Corporation to provide an individual with the opportunity to serve more than two terms of service. Rather, the amended provision establishes a new limitation that the Corporation must enforce.

Theoretically, using the calculation for the aggregate value of awards received (discussed previously in this preamble), without term limitations, an individual could potentially serve as few as two full-time terms, or as many as 9 minimum-time terms, in AmeriCorps State and National. The number of minimum-time terms could be even higher if an individual leaves one or more terms for compelling personal circumstances. A minimum-time term may be completed over two years. Thus, without term limitations, a single individual could potentially serve in AmeriCorps State and National for nearly 20 years.

By statute, one of the Corporation's guiding purposes is to "encourage citizens of the United States * * * to engage in full-time or part-time national service." In furtherance of this, the Corporation's longstanding policy is to limit the number of terms an individual may serve in an approved national service position to ensure that there are opportunities for all interested Americans to serve. Increasingly, applications for AmeriCorps far exceed available positions. The Corporation's current limitation of two terms of service in AmeriCorps State and National means that, after a maximum of two terms, a position will be available for a new individual to have an opportunity to serve.

As discussed previously in this preamble, however, the Corporation appreciates that the law as amended affords more opportunities to serve for those individuals who serve in less-than-full-time positions. To balance the increased flexibility afforded by the amended statute with the Corporation's interest in providing more Americans an opportunity to serve, the Corporation proposes to double the number of available terms in AmeriCorps State and National from two to four. This would provide twice as many opportunities as were previously available, but would place a reasonable limit in order to ensure service opportunities are available for other interested participants.

This proposed rule amends § 2522.235 to limit the number of terms an individual may serve in AmeriCorps State and National to four. A term of service includes full-time, part-time, and reduced-part-time terms, as well as any term from which one exits after serving 15 percent of the agreed term of service or a term from which one is exited for misconduct. If a person leaves for reasons other than misconduct prior to serving 15%, the term is not considered a term of service for the purposes of this limitation. This does not mean that an individual is guaranteed four terms of service in AmeriCorps State and National.

Exhaustion of the number of terms one serves in AmeriCorps State and National would not necessarily prevent an individual from enrolling in a position in another national service program, such as AmeriCorps NCCC, AmeriCorps VISTA, or Silver Scholars, and receiving an education award for successful completion of the service. For example, if an individual serves four minimum-time terms in AmeriCorps State and National, for an aggregate value of .85 education awards received, the individual could enroll in a term in another national service program such as AmeriCorps VISTA, AmeriCorps NCCC, or Silver Scholars.

However, under the proposed rule, an individual may not enroll in any term of service for which the successful completion would result in receipt of an award that, when combined with the aggregate value of awards previously received, would exceed the value of two full-time education awards. Thus, if an individual served for two full-time terms of service in AmeriCorps State and National and received two full-time education awards, the individual would not be eligible to enroll in any term in AmeriCorps State and National, AmeriCorps NCCC, AmeriCorps VISTA, Silver Scholar, or other national service program for which the successful completion would result in the receipt of an AmeriCorps or Silver Scholar education award.

Please note that the Corporation's current regulatory limitation of two terms of service in AmeriCorps State and National fits within the current statutory framework, and will remain in effect until this proposed rule has been finalized.

Selection Criteria Sub-Categories for AmeriCorps State and National (Part 2522)

The Serve America Act amended Subtitle C of title I of the NCSA by placing greater emphasis on a grantee's impact. Programs are now described not only in terms of their programmatic activities and the unmet community needs the programs are addressing, but also in terms of 'performance indicators' that demonstrate the program's impact. Additionally, the NCSA now requires the Corporation to each year fund at least two of five statutorily described programs, including programs that address unmet education, health, economic opportunity, veteran, and clean energy needs. While the Corporation can accommodate these changes in future grant competitions without changing our current published selection criteria, the current "sub-categories" of the basic selection criteria and the published weights for the sub-categories are an imperfect fit for the increased emphasis on performance and funding of programs addressing particular community needs.

This proposed rule would remove §§ 2522.425–435, the sections that describe the sub-categories of the three basic selection criteria, as well as §§ 2522.445–448, the sections that set out the weights given to the sub-categories.

The Corporation will, in the future, publish specific sub-categories for the basic selection criteria as well as funding priorities in the Notice of Funds Availability. This will enable the Corporation to adjust application components and the weights given to sub-components. Additionally, this will further the Corporation's continued efforts to simplify the application process, as supported by the Serve America Act.

The Corporation will continue to use a multi-stage process, including review by a panel of experts, and will continue to make funding decisions based on the same basic selection criteria of program design, organizational capability, and cost-effectiveness and budget adequacy. The weights given to the basic selection criteria—50% for program design, 25% for organizational capability, and 25% for cost-effectiveness and budget adequacy—would not change. The change in location of published sub-categories and their respective weights does not signify a change in the Corporation's standards for transparency, clarity, and consistency in considering applications; all applicants will be made aware of sub-categories of selection criteria in advance of the application and review process.

Please note that for the 2010 AmeriCorps State and National grant competition, the currently published selection criteria, sub-categories, and weights remain in effect.

Applications for the Same Project (§ 2522.320)

The Serve America Act amended Sec. 130(g) of the NCSA, which previously required the Corporation to "reject an application * * * if a project proposed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation." As amended, this section now prohibits the Corporation from providing "more than [one] grant under the national service laws for a fiscal year to support the same project under the national service laws." This provision, as amended, supports the Corporation's longstanding practice not to provide more than one grant to the same project. In addition, the revised language increases the Corporation's flexibility in structuring its grant application review process.

This proposed rule aligns the regulations with the amended statute by removing the regulatory conditions under which an applicant may submit multiple applications for the same project. In the future, the Corporation will include guidance on applying for different funds for the same project in the grant application instructions. For the purposes of preventing the same project from receiving more than one grant under the national service laws, the Corporation will continue to use the characteristics currently listed in § 2522.340 when determining whether two projects are the same.

Please note that the current regulations at §§ 2522.320–330 prohibiting the submission of more than one application for the same project in a single competition remain in effect for the 2010 AmeriCorps State and National grant competition.

Pre-Approval of Formula Programs (§ 2550.80)

Sec. 130(f) of the NCSA was amended by the Serve America Act by removing the requirement that a State's application for Subtitle C (of title I of the NCSA) formula funds include an assurance that formula programs be selected on a competitive basis prior to submission of the application. This amendment aligns with language from the Corporation's annual appropriations and conforms to current practice. States continue to be required to provide an assurance that formula programs will be selected on a competitive basis, however, States may select these programs after submitting the application for Subtitle C formula funds. This proposed rule amends § 2550.80 to reflect this change.

Hardship Waiver Permitted for Cost Reimbursement Cap for Senior Companion and Foster Grandparent Programs (§§ 2551.92, 2552.92)

Under current regulations, the total of cost reimbursements attributable to Senior Companions or Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, may not exceed 80 percent of the Federal share of the grant award. Because of the financial challenges faced by some organizations as a result of the recent economic downtown and the real potential for a decrease in non-Federal support, the proposed rule permits the Corporation to allow an exception to the 80 percent limit in cases of demonstrated need. Demonstrated need would include initial difficulties in developing local funding sources in the first three years of operation; an economic downturn, natural disaster, or other similar event that severely reduces sources of local funding support; or the unexpected discontinuation of a long-term local funding source.

SUMMARY OF REDESIGNATIONS

Previous location	Proposed location
§ 2522.220(c)	§ 2522.220(b)
§ 2522.220(d)	§ 2522.220(c)
§ 2522.220(e)	§ 2522.220(d)
§ 2522.220(f)	§ 2522.220(e)
§ 2522.220(g)	§ 2522.220(f)
Part 2530	Part 2531
Part 2531	Part 2532
Part 2532	Part 2533

IV. Effective Dates

The Corporation intends to make any final rule based on this proposed rule effective no sooner than 30 days after the final rule is published in the **Federal Register**. We will include an implementation schedule in the final rule, based on the final rule's date of publication.

V. Non-Regulatory Issues

Executive Order 12866

Under Executive Order 12866, the Chief Executive Officer must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) create novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Chief Executive Officer has determined that this regulatory action is not significant under the Executive Order.

Regulatory Flexibility Act

The Corporation has determined that the regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Paperwork Reduction Act of 1995

Sections 2526.10, 2528.10, 2528.30, 2528.40, 2528.60, 2528.70, 2529.10, 2530.30, and 2530.85 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Corporation has submitted a copy of these sections to the Office of Management Budget (OMB) for its review.

Section 2526.10 identifies two new categories of individuals eligible to receive education awards—individuals who have successfully completed terms of service in Silver Scholar and Summer of Service positions. The proposed addition requires the development of new enrollment and exit forms for the National Service Trust for individuals enrolling in and exiting from Silver Scholar or Summer of Service positions. The Corporation estimates the burden associated with filling out a Silver Scholar or Summer of Service enrollment form to be 3 minutes and a Silver Scholar or Summer of Service

exit form to be 3 minutes. Additionally, § 2526.10 requires the program supervising the participant to certify that the participant met eligibility criteria and successfully completed the required term of service. The proposed change affects those programs who supervise the participants. The burden hour estimate associated with the current exit form reported under OMB Control Number 3045–0015 is 3 minutes. The Corporation does not expect the proposed changes to increase the burden for this collection.

Section 2528.10 expands the available uses of an education award to include use for current educational expenses incurred in enrolling in an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary of Veterans Affairs. Sections 2528.60–70 lay out the processes for requesting to use an award for this purpose. These proposed provisions affect individuals who choose to use education awards for this purpose, and the educational institutions or training establishments at which such individuals elect to use their awards. The burden hour estimate associated with the current voucher and payment request form reported under OMB Control Number 3045–0014 is 5 minutes. The Corporation does not expect the proposed additions to increase the burden for this collection.

Section 2529.10 expands the availability of payments on accrued interest to individuals who successfully complete terms of service in Silver Scholar positions. This affects those individuals who serve in Silver Scholar programs and elect to place qualified student loans in forbearance, and request accrued interest payments from the National Service Trust. The burden hour estimate associated with the current forbearance request form and interest accrual form, reported under OMB Control Numbers 3045–0030 and 3045–0053 are 1 minute and 10 minutes, respectively. The Corporation does not expect the proposed changes to increase the burdens for these collections.

Sections 2530.30 and 2530.85 set forth the processes for requesting to transfer an award, accepting a transferred award, and revoking a transferred award. This affects those individuals who choose to transfer their education awards and those individuals receiving awards via transfer. The Corporation estimates the burden associated with requesting to transfer an award and accepting a transferred award to be 5 minutes, and the burden associated with revoking a transferred award to be 5 minutes.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2522

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2527

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2529

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2530

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2531

Grant programs—social programs.

45 CFR Part 2532

Grant programs—social programs, Volunteers.

45 CFR Part 2533

Grants administration, Grant programs—social programs.

45 CFR Part 2550

Grants administration, Grant programs—social programs.

45 CFR Part 2551

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2552

Grants administration, Grant programs—social programs, Volunteers.

For the reasons stated in the preamble, under the authority 42 U.S.C. 12651d, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations, as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for Part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2510.20 by adding definitions for "Approved Silver Scholar position" and "Approved Summer of Service position" in alphabetical order, to read as follows:

§ 2510.20 Definitions

* * * * *

Approved Silver Scholar Position. The term *approved Silver Scholar position* means a Silver Scholar position for which the Corporation has approved a Silver Scholar education award.

Approved Summer of Service Position. The term *approved Summer of Service position* means a Summer of Service position for which the Corporation has approved a Summer of Service education award.

* * * * *

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

3. The authority citation for Part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911.

4. Amend § 2522.220 by:

a. Revising the heading;

b. Removing paragraph (b);

c. Redesignating paragraphs (c) through (g) as (b) through (f), respectively; and

d. Revising newly redesignated paragraph (b).

The revisions read as follows:

§ 2522.220 What are the required terms of service for AmeriCorps participants?

* * * * *

(b) *Eligibility for subsequent term.* A participant will only be eligible to serve a subsequent term of service if that individual has received satisfactory performance review(s) for any previous term(s) of service in an approved AmeriCorps position, in accordance with the requirements of paragraph (d) of this section and § 2526.15. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

* * * * *

5. Amend § 2522.230 by:

a. Revising paragraphs (b)(6) and (b)(7); and

b. Revising paragraph (e).

The revisions read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

* * * * *

(b) * * *

(6) An individual's eligibility for a subsequent term of service in AmeriCorps will not be affected by release for cause from a prior term of service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.220(d)(2) for the period served in the prior term.

(7) Except as provided in paragraph (e) of this section, a term of service from which an individual is released for cause counts as one of the terms of service described in § 2522.235 for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

* * * * *

(e) *Release prior to serving 15 percent of a term of service.* If a participant is released for reasons other than misconduct prior to completing 15 percent of a term of service, the term will not be considered to be one of the terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

6. Add a new § 2522.235 to read as follows:

§ 2522.235 Is there a limit on the number of terms an individual may serve in an AmeriCorps State and National program?

(a) *General limitation.* An individual may receive the benefits described in §§ 2522.240 through 2522.250 for no more than four terms of service in an AmeriCorps State and National program, regardless of whether those terms were served on a full-, part-, or reduced part-time basis, consistent with the limitations in § 2526.50.

(b) *Early release.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for compelling personal circumstances or for cause counts as one of the terms of service for which an individual may receive the benefits described in § 2522.240 through § 2522.250.

(c) *Release prior to serving fifteen percent of a term.* If a person is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the terms of service for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

7. Amend § 2522.240 by:

a. Revising paragraph (a); and

b. Removing the reference to § 2522.220(g) in paragraph (c) and adding a reference to § 2522.220(f) in its place.

The revision will read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *AmeriCorps educational awards.* An individual serving in an approved AmeriCorps State and National position will receive an educational award from the National Service Trust upon successful completion of each of no more than four terms of service as defined in § 2522.220, consistent with the limitations in § 2526.50.

* * * * *

§§ 2522.320, 2522.330, 2522.425, 2522.430, 2522.435, 2522.445, and 2522.448 [Removed and Reserved]

8. Remove and reserve §§ 2522.320, 2522.330, 2522.425, 2522.430, 2522.435, 2522.445, and 2522.448.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

9. The authority citation for Part 2525 is revised to read as follows:

Authority: 42 U.S.C. 12601–12606.

10. Amend § 2525.20 by:

a. Removing the definition for "approved school-to-work program";

b. Revising the definitions for "education award" and "term of service"; and

c. Adding definitions for "AmeriCorps education award," "economically disadvantaged youth," "Silver Scholar education award," and "Summer of Service education award" in alphabetical order, to read as follows:

§ 2525.20 [Amended]

* * * * *

AmeriCorps education award. For the purposes of this section, the term *AmeriCorps education* award means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

* * * * *

Economically disadvantaged youth. For the purposes of this section, the phrase *economically disadvantaged youth* means a child who is eligible for a free lunch and breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

Education award. For the purposes of this section, the term *education award* refers to the financial assistance available under parts 2526 through 2528 of this chapter, including AmeriCorps education awards, Silver Scholar education awards, and Summer of Service education awards.

* * * * *

Silver Scholar education award. For the purposes of this section, the term *Silver Scholar education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Silver Scholar position may be eligible.

Summer of Service education award. For the purposes this section, the term *Summer of Service education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Summer of Service position may be eligible.

Term of service. The term *term of service* means—

(1) For an individual serving in an approved AmeriCorps position, one of the terms of service specified in § 2522.220 of this chapter;

(2) For an individual serving in an approved Silver Scholar position, not less than 350 hours during a one-year period; and

(3) For an individual serving in an approved Summer of Service position, not less than 100 hours during the summer months.

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

11. The authority citation for Part 2526 is revised to read as follows:

Authority: 42 U.S.C. 12601–12604, 12606.

12. Amend § 2526.10 by revising paragraph (a) to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the organization responsible for the individual's supervision in a national service program certifies that the individual—

(1) Met the applicable eligibility requirements for the approved AmeriCorps position, approved Silver Scholar position, or approved Summer of Service position, as appropriate, in which the individual served;

(2)(i) For an AmeriCorps education award, successfully completed the required term of service in the approved national service position;

(ii) For a partial AmeriCorps education award, completed at least 15 percent of the originally-approved term of service, and performed satisfactorily prior to being granted a release for compelling personal circumstances consistent with § 2522.230(a);

(iii) For a Summer of Service education award, successfully completed the required term of service in a Summer of Service position; or

(iv) For a Silver Scholar education award, successfully completed the required term of service in a Silver Scholar position; and

(3) Is a citizen, national, or lawful permanent resident alien of the United States.

* * * * *

13. Add a new § 2526.15 to read as follows:

§ 2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?

(a) An organization responsible for the supervision of an individual serving in an AmeriCorps State and National position will determine whether an individual successfully completed a term of service based upon an end-of-term evaluation conducted pursuant to § 2522.220(d).

(b) An organization responsible for the supervision of an individual serving in a program other than AmeriCorps State and National will determine whether an individual successfully completed a term of service based upon an end-of-term evaluation that examines whether the individual:

(1) Completed the required number of service hours for the term of service;

(2) Satisfactorily performed on assignments, tasks, or projects; and

(3) Met any performance criteria as determined by the program and communicated to the member.

(c) A certification by the organization responsible for the supervision of an individual that the individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation.

14. Amend § 2526.20 by revising paragraph (a) to read as follows:

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant in an approved AmeriCorps position who is released prior to completing an approved term of service for compelling personal circumstances in accordance with § 2522.230(a) is eligible for a pro-rated education award if the participant—

(1) Performed satisfactorily prior to being granted a release for compelling personal circumstances; and

(2) Completed at least 15 percent of the originally-approved term of service.

* * * * *

15. Add a new § 2526.25 to read as follows:

§ 2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?

No. An individual released for any reason prior to completing an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

16. Revise § 2526.40 to read as follows:

§ 2526.40 What is the time period during which an individual may use an education award?

(a) *General requirement.* Unless the Corporation approves an extension in accordance with the requirements of paragraph (b) of this section—

(1) An individual may use an AmeriCorps education award or a Silver Scholar education award within seven years of the date on which the individual successfully completed a term of service in an approved AmeriCorps or Silver Scholar position;

(2) An individual may use a Summer of Service education award within ten years of the date on which the individual successfully completed a term of service in an approved Summer of Service position;

(3) A designated individual who receives a transferred education award in accordance with § 2530.10 may use the transferred education award within ten years of the date on which the individual who transferred the award successfully completed the term of service in an approved AmeriCorps or Silver Scholar position that is the basis of the award.

(b) *Extensions.* In order to receive an extension of the period of availability specified in paragraph (a) of this section for using an education award, an individual must apply to the Corporation for an extension prior to the end of that time period. The Corporation will grant an application for an extension under the following circumstances:

(1) If the Corporation determines that an individual was performing another term of service in an approved AmeriCorps, Summer of Service, or Silver Scholar position during the original period of availability, the Corporation will grant an extension for a time period that is equivalent to the time period during which the individual was performing the other term of service.

(2) If the Corporation determines that an individual was unavoidably prevented from using the education award during the original period of availability, the Corporation will grant an extension for a period of time that the Corporation deems appropriate. An individual who is ineligible to use an education award as a result of the individual's conviction of the possession or sale of a controlled substance is not considered to be unavoidably prevented from using the education award for the purposes of this paragraph. In the case of a transferred award, an individual who is unable to use an education award as a result of being too young to enroll in an institution of higher education or other training establishment is not considered to be unavoidably prevented from using the education award.

17. Revise § 2526.50 to read as follows:

§ 2526.50 Is there a limit on the total amount of education awards an individual may receive?

(a) *General Limitation.* No individual may receive more than an amount equal to the aggregate value of two full-time education awards.

(b) *Calculation of the value of an education award.* For the purposes of this section, the value of an education award is equal to the actual amount of the education award received divided by the amount of a full-time education award in the year the AmeriCorps or Silver Scholar position to which the award is attributed was approved. Each award received will be considered to have a value between 0 and 1. Although the amount of a full-time award as defined in § 2527.10(a) may change, the value of a full-time award will always be equal to 1.

(c) *Calculation of aggregate value of awards received.* The aggregate value of awards received is equal to the sum of:

(1) The value of each education award received as a result of successful completion of an approved AmeriCorps position;

(2) The value of each partial education award received as a result of release from an approved AmeriCorps position for compelling personal circumstances;

(3) The value of each education award received as a result of successful completion of a term of service in an approved Silver Scholar position; and

(4) The value of any amount received as a transferred education award, except as provided in § 2530.60(c).

(d) *Determination of Receipt of Award.* For purposes of determining the aggregate value of education awards, an award is considered to be received at the time it becomes available for an individual's use.

18. Add a new § 2526.55 to read as follows:

§ 2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to enroll in subsequent terms of service?

No individual may enroll in a subsequent term of service if successful completion of that term of service would result in receipt of an education award the value of which, when added to the aggregate value of awards previously received, would be greater than 2.

19. Revise § 2526.60 to read as follows:

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans, except as provided under 31 CFR 685.219.

20. Add a new § 2526.70 to read as follows:

§ 2526.70 What are the effects of an erroneous certification of successful completion of a term of service?

(a) If the Corporation determines that the certification made by an national service program under § 2526.10(a)(2)(i), (iii), or (iv) is erroneous, the Corporation shall assess against the national service program a charge for the amount of any associated payment or potential payment from the National Service Trust, taking into consideration the full facts and circumstances surrounding the erroneous or incorrect certification.

(b) Nothing in this section shall prohibit the Corporation from taking any action authorized by law based upon any certification that is knowingly made in a false, materially misleading, or fraudulent manner.

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

21. The authority citation for Part 2527 is revised to read as follows:

Authority: 42 U.S.C. 12601–12606.

22. Amend § 2527.10 by:

a. Revising the heading;

b. Revising paragraphs (a), (b), and (c); and

c. Adding new paragraphs (e) and (f).

The revisions and additions read as follows:

§ 2527.10 What is the amount of an education award?

(a) *Full-time term of service.* The education award for a full-time term of service in an approved AmeriCorps position of at least 1,700 hours will be equal to the maximum amount of a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the award year in which the term of service is approved by the Corporation.

(b) *Part-time term of service.* The education award for a part-time term of service in an approved AmeriCorps position of at least 900 hours is equal to one half of the amount of an education award amount for a full-time term of service described in paragraph (a) of this section.

(c) *Reduced part-time term of service.* The education award for a reduced part-time term of service in an approved AmeriCorps position of fewer than 900 hours is an amount equal to the product of:

(1) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(2) The amount of the education award for a part-time term of service described in paragraph (b) of this section.

* * * * *

(e) *Summer of Service Education Award.* (1) *In general.* The education award for a term of service in an approved Summer of Service position for at least 100 hours is $500.

(2) *Exception.* The Corporation may authorize a Summer of Service education award of $750 if the participant is economically disadvantaged, as certified by the school operating the Summer of Service program.

(f) *Silver Scholar Education Award.* The education award for a term of service in an approved Silver Scholar position for at least 350 hours is $1,000.

PART 2528—USING AN EDUCATION AWARD

23. The authority citation for Part 2528 is revised to read as follows:

Authority: 42 U.S.C. 12601–12606.

24. Revise § 2528.10(a)(3) to read as follows:

§ 2528.10 [Amended]

(a) * * *

(3) To pay expenses incurred in enrolling in an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill (38 U.S.C. 3670 *et seq.*) for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary of Veterans Affairs, in accordance with §§ 2528.60, 2528.70, and 2529.80.

25. Revise § 2528.30(a)(2)(vi)(A) and (B) to read as follows:

§ 2528.30 [Amended]

(a) * * *

(2) * * *

(vi) * * *

(A) The individual's cost of attendance and other educational expenses; and

(B) The individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act (20 U.S.C. 1070 *et seq.*).

* * * * *

26. Revise § 2528.40(a) and (b) to read as follows:

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

* * * * *

(a) The individual's cost of attendance and other educational expenses, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act.

27. Revise § 2528.60 to read as follows:

§ 2528.60 Who may use the education award to pay expenses incurred in an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill?

To use the education award to pay expenses incurred in enrolling at an educational institution or training establishment in a program of education approved by the Secretary of Veterans Affairs (38 U.S.C. 3670 *et seq.*), you must have received an education award for successfully completing a term in an approved AmeriCorps position, approved Summer of Service position, or approved Silver Scholar position, in which you enrolled on or after October 1, 2009.

28. Revise § 2528.70 to read as follows:

§ 2528.70 What steps are necessary to use an education award to pay expenses incurred in enrolling at an educational institution or training establishment in a program of education approved by the Secretary of Veterans Affairs?

(a) *Required Information.* Before disbursing an amount from an education award to pay for expenses incurred in enrolling at an educational institution or training establishment in a program of education approved by the Secretary of Veterans Affairs (38 U.S.C. 3670 *et seq.*), the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Verification from the individual that the individual meets the criteria in § 2528.60; and

(3) Information from the educational institution or training establishment as requested by the Corporation, including verification that—

(i) The amount requested will be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training offered by the institution or establishment;

(ii) The course(s) or program(s) for which the individual is requesting to use the education award has been and is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs; and

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution or establishment will ensure a pro-rata refund to the Corporation of the unused portion of the education award.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution or establishment and notify the individual of the payment.

29. Add a new § 2528.80 to read as follows:

§ 2528.80 What happens if an individual for whom the Corporation has disbursed education award funds withdraws or fails to complete the period of enrollment at an educational institution or training establishment in a program of education approved by the Secretary of Veterans Affairs?

(a) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, the approved educational institution or training establishment that receives a disbursement of education award funds from the Corporation must provide a pro-rata refund to the Corporation of the unused portion of the education award.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

PART 2529—PAYMENT OF ACCRUED INTEREST

30. The authority citation of Part 2529 is revised to read as follows:

Authority: 42 U.S.C. 12601–12606.

31. Amend § 2529.10 by revising the heading and paragraph (a)(1) to read as follows:

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?

(a) * * *

(1) The individual successfully completes a term of service in an approved AmeriCorps position or approved Silver Scholar position; and

* * * * *

PARTS 2530, 2531, 2532, AND 2533 [REDESIGNATED AS PARTS 2531, 2532, 2533, AND 2534]

32. Redesignate parts 2530, 2531, 2532, and 2533 as parts 2531, 2532, 2533 and 2534, respectively

33. Add a new Part 2530 to read as follows:

PART 2530—TRANSFER OF EDUCATION AWARDS

Sec.

Authority: 42 U.S.C. 12601–12606.

§ 2530.10 Under what circumstances may an individual transfer an education award?

An individual may transfer an education award to the individual's child, grandchild, or foster child if—

(a) The individual enrolled in an approved AmeriCorps State and National position or approved Silver Scholar position on or after October 1, 2009;

(b) The individual was age 55 or older on the day the individual commenced the term of service in an approved AmeriCorps State and National position or in approved Silver Scholar position;

(c) The individual successfully completed a term of service in an approved AmeriCorps State and National position or an approved Silver Scholar position;

(d) The award the individual is requesting to transfer has not expired, consistent with the period of availability set forth in § 2526.40(a);

(e) The individual designated to receive the transferred award is the transferring individual's child, grandchild, or foster child; and

(f) The individual designated to receive the transferred award is a citizen, national, or lawful permanent resident alien of the United States.

§ 2530.20 For what purposes may a transferred award be used?

A transferred award may be used by a designated individual to repay qualified student loans or to pay current educational expenses at an institution of higher education, as described in § 2528.10.

§ 2530.30 What steps are necessary to transfer an education award?

(a) *Request for Transfer.* Before transferring an award to a designated individual, the Corporation must receive a request from the transferring individual, including—

(1) The individual's written authorization to transfer the award, the year in which the award was earned, and the specific amount of the award to be transferred;

(2) Identifying information for the individual designated to receive the transferred award;

(3) A certification that the transferring individual meets the requirements of § 2530.10; and

(4) A certification that the designated individual is the child, grandchild, or foster child of the transferring individual.

(b) *Notification to Designated Individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will contact the designated

individual to notify the individual of the proposed transfer, confirm the individual's identity, and give the individual the opportunity to accept or reject the transferred award.

(c) *Acceptance by Designated Individual.* To accept an award, a designated individual must certify that the designated individual is the child, grandchild, or foster child of the transferring individual and that the designated individual is a citizen, national, or lawful permanent resident alien of the United States. Upon receipt of the designated individual's acceptance, the Corporation will create an account in the National Service Trust for the designated individual, if an account does not already exist, and the accepted amount will be deducted from the transferring individual's account and credited to the designated individual's account.

(d) *Timing of transfer.* The Corporation must receive the request from the transferring individual prior to the date the award expires.

§ 2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?

(a) *General Limitation.* For each award an individual earns as a result of successfully completing a single term of service, an individual may transfer all or part of the award to a single designated individual. An individual may not transfer a single award attributable to successful completion of a single term of service to more than one designated individual.

(b) *Re-transfer.* If a designated individual rejects a transferred award in full, or the Corporation determines that an award was revoked for good cause in accordance with § 2530.80(c), the transferring individual may designate another individual to receive the transferred award.

§ 2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?

Consistent with § 2526.50, no individual may receive more than an amount equal to the value of two full-time education awards. If the sum of the value of the requested transfer plus the aggregate value of educational awards a designated individual has previously received would exceed the aggregate value of two full-time education awards, as determined pursuant to § 2526.50(b), the designated individual will be deemed to have rejected that portion of the award that would result in the excess. If a designated individual has already received the aggregate value of two full-time education awards, the individual may not receive a transferred award, and the designated individual will be deemed to have rejected the award in full.

§ 2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?

(a) *Impact on Transferring Individual.* Pursuant to § 2526.50, an award is considered to be received at the time it becomes available for an individual's use. Transferring all or part of an award does not reduce the aggregate value of education awards the transferring individual is considered to have received.

(b) *Impact on Designated Individual.* For the purposes of determining the value of the transferred education award under § 2526.50, a designated individual will be considered to have received a value equal to the amount accepted divided by the amount of a full-time award in the year the transferring individual's position was approved.

(c) *Result of revocation on award value.* If the transferring individual revokes all or part of a transferred education award, the value of the education award considered to have been received by the designated individual for purposes of § 2526.50 will be reduced accordingly.

§ 2530.70 Is a designated individual required to accept a transferred education award?

(a) *General Rule.* A designated individual is not required to accept a transferred education award, and may reject an award in whole or in part.

(b) *Result of rejection in full.* If the designated individual rejects a transferred award in whole, the amount is credited to the transferring individual's account in the National Service Trust, and may be transferred to another individual, or may be used by the transferring individual for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Result of rejection in part.* If the designated individual rejects a transferred award in part, the rejected portion is credited to the transferring individual's account in the National Service Trust, and may be used by the transferring individual's for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a). An individual may not re-transfer the rejected portion of the award to another individual.

§ 2530.80 Is an award revocable once transferred?

(a) *Revocation.* An individual may revoke a transferred education award at any time and for any reason prior to the award's use by the designated individual.

(b) *Use of Award.* Upon revocation, the amount revoked will be deducted from the designated individual's account and credited to the transferring individual's account. The transferring individual may use the revoked transferred education award for any of the purposes described in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Re-transfer.* Generally, an individual may not re-transfer an award to another individual after revoking the same award from the original designated individual. The Corporation may approve re-transfer of an award for good cause, including cases in which the original designated individual was unavoidably prevented from using the award, as demonstrated by the individual transferring the award.

§ 2530.85 What steps are necessary to revoke an award?

(a) *Request for revocation.* Before revoking an award from a designated individual, the Corporation must receive a request from the transferring individual, including—

(1) The individual's written authorization to revoke the award;

(2) The year in which the award was earned;

(3) The specific amount to be revoked; and

(4) The identity of the designated individual.

(b) *Credit to transferring individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will deduct the amount specified in the transferring individual's request from the designated individual's account and credit the amount to the account of the transferring individual, except as provided in paragraph (c) of this section. The Corporation will notify the transferring individual the amount revoked.

(c) *Used awards.* The Corporation will only revoke that portion of the transferred award that has not been used by the designated individual. If the designated individual has used the entire transferred amount prior to the date the Corporation receives the revocation request, no amount will be returned to the transferring individual. An amount is considered to be used when it is disbursed from the National

Service Trust, not when a request is received to use an award.

(c) *Notification to designated individual.* The Corporation will notify the designated individual of the amount being revoked as of the date of the Corporation's receipt of the revocation request.

(d) *Timing of revocation.* The Corporation must receive the request to revoke the award from the transferring individual prior to the award's expiration ten years from the date the award was originally earned.

§ 2530.90 Is a designated individual eligible for the payment of accrued interest under part 2529?

No, an individual must have successfully completed a term of service in an approved AmeriCorps position or Silver Scholar position to be eligible for the payment of accrued interest under Part 2529.

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

34. The authority citation for Part 2550 continues to read as follows:

Authority: 42 U.S.C. 12638.

35. Amend § 2550.80 by revising paragraph (b) to read as follows:

§ 2550.80 [Amended]

* * * * *

(b) *Selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Prepare an application to the Corporation to receive funding or education awards for national service programs operating in and selected by the State.

(2) Administer a competitive process to select national service programs for funding. The State is not required to select programs for funding prior to submission of the application described in paragraph (b)(1) of this section.

* * * * *

PART 2551—SENIOR COMPANION PROGRAM

36. The authority citation for Part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

37. Amend § 2551.92 by revising paragraph (e) to read as follows:

§ 2551.92 [Amended]

* * * * *

(e) *How are Senior Companion cost reimbursements budgeted?* (1) Except as provided in (e)(2) of this section, the total of cost reimbursements for Senior Companions, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the Federal share of the grant award. Federal, required non-Federal, and excess non-Federal resources can be used to make up the amount allotted for cost reimbursements.

(2) The Corporation may allow exceptions to the 80 percent cost reimbursement requirement in cases of demonstrated need such as:

(i) Initial difficulties in the development of local funding sources during the first three years of operations;

(ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

* * * * *

PART 2552—FOSTER GRANDPARENT PROGRAM

38. The authority citation for Part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

39. Amend § 2552.92 by revising paragraph (e) to read as follows:

§ 2552.92 What are project funding requirements?

* * * * *

(e) *How are Foster Grandparent cost reimbursements budgeted?* (1) Except as provided in (e)(2) of this section, the total of cost reimbursements for Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the Federal share of the grant award. Federal, required non-Federal, and excess non-Federal resources can be used to make up the amount allotted for cost reimbursements.

(2) The Corporation may allow exceptions to the 80 percent cost reimbursement requirement in cases of demonstrated need such as:

(i) Initial difficulties in the development of local funding sources during the first three years of operations; or

(ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

Dated: February 17, 2010.

Frank R. Trinity,

General Counsel.

[FR Doc. 2010–3385 Filed 2–22–10; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 75, No. 35
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 17, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Worksheet for Supplemental Nutrition Assistance Program Quality Control Reviews.

OMB Control Number: 0584–0074.

Summary of Collection: State agencies are required to perform Quality Control Reviews for the Supplemental Nutrition Assistance Program (SNAP). In order to determine the accuracy of SNAP benefits authorized by State agencies, a statistical sample of SNAP cases is selected for review from each State agency. Relevant information from the case record, investigative work and documentation about individual cases is recorded on the FNS–380, Worksheet for SNAP Quality Control Reviews. This information, along with supporting documentation, is the basis for the determination of the accuracy of the case. Section 16 of the Food and Nutrition Act of 2008 provides the legislative basis for the operation of the QC system.

Need and Use of the Information: The Food and Nutrition Service (FNS) will use the information from the FNS–380 to record identifying information about the household and to also document and evaluate each step of the field investigation process to determine eligibility and payment amounts under FNS' approved State agency practices.

Description of Respondents: State, Local, or Tribal Government; individuals or households.

Number of Respondents: 56,118.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 500,301.

Food Nutrition Service

Title: Monthly Claim for Reimbursement.

OMB Control Number: 0584–0284.

Summary of Collection: The Child Nutrition Act of 1966 requires that educational agencies disburse and appropriate funds during the fiscal year for the purposes of carrying out provisions of the Special Milk Program (SMP). The National School Lunch Act requires that State educational agency appropriated funds for any fiscal year for the purposes of fulfilling the earned reimbursement set forth in National School Lunch, Breakfast, and Special Milk Programs. The Food and Nutrition Service will use the monthly claim reimbursement form FNS–806A and 806B to fulfill the earned requirements identified in these programs, National School Lunch Program (NSLP), SMP, and the School Breakfast Program (SBP).

Need and Use of the Information: The information is collected electronically from school food authorities that participate in NSLP, School Breakfast Program (SBP), and SMP programs. The forms contain meal and cost data collected from authorized program participants. Also, these forms are essential part of the accounting system used by the subject programs to ensure proper reimbursement. This information is collected monthly because of the constant fluctuation in school enrollment and program participation. Program participants would not receive the monthly reimbursement earned and the Agency would lose program accountability, if this information were collect less frequently.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 233.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 1,398.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3430 Filed 2–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 17, 2010

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: 7 CFR 340; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering.

OMB Control Number: 0579–0085.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) is charged with preventing the introduction of plant pest into the United States or their dissemination within the United States. The statutory requirements for the information collection activity are found in the Plant Pest Act (PPA). The regulations in 7 CFR part 340 implement the provisions of the PPA by providing the information necessary to establish conditions for proposed introductions of certain genetically engineered organisms and products which present a risk of plant pest introduction. APHIS will collect information using several APHIS forms.

Need and Use of the Information: APHIS will collect the information through a notification procedure or a permit requirement to ensure that certain genetically engineered organisms, when imported, moved interstate, or released into the environment, will not present a risk of plant pest introduction. The information collected through the petition process is used to determine whether a genetically engineered organism will pose a risk to agriculture or the environment if grown in the absence of regulations by APHIS. The information is also provided to State departments of agriculture for review, and made available to the public and private sectors on the Internet to ensure that all sectors are kept informed concerning any potential risks posed through the use of genetic engineering technology.

Description of Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 121.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 3,308.

Animal and Plant Health Inspection Service

Title: Tuberculosis Testing for Imported Cattle.

OMB Control Number: 0579–0224.

Summary of Collection: Under the authority of the Animal Health Protection Act of 2002, 7 U.S.C., 8301 (*et seq.*), the Secretary of Agriculture is permitted to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth, rinderpest, and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the ability of U.S. producers to compete in the global market of animal and animal product trade. The Animal and Plant Health Inspection Service (APHIS) will collect information using form VS 17–129, "Application for Import or In Transit Permit."

Need and Use of the Information: APHIS will collect information from the permit application regarding the type, number, and identification of the animals to be exported to the United States, as well as information concerning the origin, intended date and location of arrival, routes of travel, and destination of the animals. APHIS will also collect information that certified that the herd in which the cattle was born and raised has tested TB-negative to a whole herd test. Failure to collect this information would make it impossible for APHIS to effectively evaluate the TB risks associated with cattle importation from Mexico, thereby increasing the likelihood that healthy cattle and bison throughout the United States will be exposed to tuberculosis.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 80,075.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 82,893.

Animal and Plant Health Inspection Service

Title: Asian Longhorn Beetle (ALB).

OMB Control Number: 0579–0311.

Summary of Collection: In accordance with 7 U.S.C. 7701 *et seq.,* the Secretary of Agriculture has the ability to prohibit or restrict the importation, exportation and the interstate movement of plants, plant products, certain biological control organisms, noxious weeds, and plant pests. The Asian longhorned beetle (ALB) is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, popular, willow, and elm. The beetle bores into the heartwood of a host tree, eventually killing the tree. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has administered an ALB Cooperative Eradication Program since 1996 to eradicate this destructive pest from the United States. Areas found to be infested are quarantined, and the movement of host material from the area is restricted. However, ALB continues to be a serious threat, and APHIS believes that public support is crucial to eradication efforts. APHIS plans to enlist the public's assistance in reporting the presence or absence of the ALB in their local areas. APHIS relies on the public to report sighting of the beetle or beetle damage they may see in their local area. This reporting, which is done through a simple on-line survey form to record suspected sighting of ALB.

Need and Use of the Information: The voluntary online survey will collect the following information from each respondent: For positive sightings, the name of the person reporting the finding, a way to contact then, the exact address/location of the sighting, and details on where the tree is located are needed. Failure to collect this information could lead to the deregulation of areas where the beetle is still present, thus leading to a large scale outbreak.

Description of Respondents: Individuals or households.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 415.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3433 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 17, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Organizational Information.

OMB Control Number: 0524–0026.

Summary of Collection: The National Institute of Food and Agriculture (NIFA) formerly Cooperative State Research, Education, and Extension Service (CSREES) has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and higher education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and higher education. Before awards can be made, certain information is required from applicant to assure compliance with the civil rights laws and to effectively assess the potential recipient's capacity to manage Federal funds. NIFA 666, "Organizational Information."

Need and Use of the Information: NIFA will collect information to determine that applicants recommended for awards are responsible recipients of Federal funds. If the information were not collected, it would not be possible to determine that the prospective grantees are responsible.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; State, Local, or Tribal Government.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 945.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3434 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 17, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Office of Procurement and Property Management

Title: Procurement: Maximum Workweek—Construction Schedule.

OMB Control Number: 0505–0011.

Summary of Collection: In order to obtain goods or services such as construction services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who solicit bids or offers for work from businesses in the private sector. When USDA contracts for construction services, both the contracting officer and the contractor needs to establish a schedule for the work. The contractor needs to ensure that his weekly work schedule will not conflict with the time during which USDA may allow him access to the work site. The contracting officer needs to know when the contractor will be working in order to schedule on-site conferences, to perform quality assurance inspections, and to perform compliance checks required to enforce the Davis Bacon Act (40 U.S.C. 276a–276a–7). Such compliance checks are specifically required by the Federal Acquisition Regulations (FAR) to conduct employee interviews, to check the type of work being performed, to verify the number and pay classification of workers at the site, and to verify that posters informing workers of their rights are displayed at the site (FAR 22.406–7(b)). Contracting officers put the Maximum Workweek—Construction Schedule clause in solicitations and contracts for construction when the contractor's access to the work site may be restricted to certain times of the day or week.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine when government inspectors or representatives will be needed at the site, and to schedule contractor access to the work site. The information is not collected unless the contracting officer anticipates problems with contractor access or scheduling government inspections. If the information were not collected, contracting offices would be unable to allocate contract administration resources efficiently.

Description of Respondents: Business or other for-profit.

Number of Respondents: 776.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 194.

Office of Procurement and Property Management.

Title: Procurement: Instructions for the Preparation of Technical and Business Proposals.

OMB Control Number: 0505–0013.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who use various methods to award contracts for good or services. One method, prescribed by Part 15 of the Federal Acquisition Regulation (FAR) (48 CFR) is contracting by negotiation. In contracting by negotiation, contracting officers issue solicitations to request offers for required products or services from businesses in the private sector. Together with the solicitation document, the offeror's cost proposal and its technical and business proposals constitute the offer submitted to the contracting office for evaluation and acceptance. The technical proposal, together with the offeror's pricing, is needed to select the offeror who will be awarded a contract. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch.4) prescribes the provision titled *Instructions for the Preparation of Technical and Business Proposals* (48 CFR 452.215–71) helps an offeror preparing a proposal to address the factors on which it will be evaluated.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to evaluate and determine the feasibility of the offeror's management, technical approach, and offered cost/price to provide the services and/or supplies required, if awarded a contract. If the information were not collected, OPPM would be unable to obtain goods and services required for its daily operations.

Description of Respondents: Business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 4,731.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 151,392.

Office of Procurement and Property Management

Title: Procurement: Key Personnel Clause.

OMB Control Number: 0505–0015.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who issue solicitations to request offers (proposals) for required products or services from businesses in the private sector. When USDA wishes to acquire research and development services (R&D), information technology (IT) design or support services, or advisory and assistance services, it must consider the capabilities of the personnel who the contractor assigns to the job. The contributions of certain contractor employees may be critical to the success of the work. Such employees are designated as "Key Personnel." The Agriculture Acquisition Regulation (48 CFR ch.4) (48 CFR 437.110) and (48 CFR 452.237–74) prescribes the Key Personnel clause to collect information about key contractor personnel. The contracting officer uses the Key Personnel clause to require the contractor to inform USDA, if a key person will no longer be available to perform work on the contract. Contractors whose contracts include the key personnel clause are required to notify the contracting officer about proposed substitutions for key personnel identified in the contract.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine whether the departure of a key person from the contractor's staff could jeopardize contract performance, and to determine what accommodations or remedies may be taken. If the OPPM could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.

Description of Respondents: Business or other for-profit; non-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 5,630.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,630.

Office of Procurement and Property Management

Title: Procurement: Progress Reporting Clause.

OMB Control Number: 0505–0016.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who request bids or offers for work from businesses in the private sector using solicitations. In order to administer contracts for research and development services (R&D), or for advisory and assistance services (AAS), contracting officers need information about contractor progress in performing the contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch.4) (48 CFR 437.270(a)) and (48 CFR 452.237–76) prescribe the Progress Reporting Clause to collect information about contractor progress. Contracting officers include the Progress Reporting Clause in R&D and AAS contracts to obtain information from the contractors about their performance.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to compare actual progress and expenditures to anticipated performance and contractor representations on which the award was based. The information alerts the agency of technical problems; the need for additional staff resources or finding; and the probability of timely completion within the contract cost or price. If the contracting officers could not obtain progress report information, they would have to physically monitor the contractor's operation on a day to day basis throughout the performance period.

Description of Respondents: Business or other for-profit; non-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: Quarterly; monthly.

Total Burden Hours: 120,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3435 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 17, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Forest Service

Title: Visitor Permit and Visitor Registration Card.

OMB Control Number: 0596–0019.

Summary of Collection: The Organic Administration Act (30 stat.11), the Wilderness Act (78 stat.890), the Wild and Scenic River Act (82 stat. 906) and Executive Order 11644, all authorize the Forest Service (FS) to manage the forests to benefit both land and people. The information collected from the Visitor's Permit Form (FS–2300–30) and Visitor Registration Card (FS–2300–32) help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and compatible with the mission of the agency. The information is collected from National Forest System land visitors, who will be asked to describe their intended use of the land and the estimated duration of their visit.

Need and Use of the Information: FS will collect the visitor's name, address, area to be visited, date of visit, length of stay, method of travel, number of people, and number of pack and saddle stock. The permit and registration card allows managers to identify heavily used areas to prepare restoration and monitoring plans that reflect where use is occurring, and in extreme cases, to develop plans to move forest users to lesser-impacted areas. The completed forms also provide managers with information useful in locating lost forest visitors. Not being able to use these forms could result in overuse and site deterioration in environmentally sensitive areas.

Description of Respondents: Individuals or households; business or other for-profit; not-for profit institutions.

Number of Respondents: 460,000.

Frequency of Responses: Reporting: Other (per visit).

Total Burden Hours: 23,000.

Forest Service

Title: Youth Conservation Corps Application & Medical History Forms.

OMB Control Number: 0596–0084.

Summary of Collection: Under Public Law 93–408, the Youth Conservation Corps Act (YCC), the Forest Service (U.S. Department of Agriculture), and agencies within the Department of the Interior (the Fish and Wildlife Service, National Park Service, and Bureau of Land Management) cooperate to provide seasonal employment for eligible youth 15 to 18 years old.

Need and Use of the Information: Youth, ages 15–18, who seek training and employment with participating agencies through the YCC must complete an application form (FS–1800–18) and once selected for employment must complete a medical history form (FS–1800–3). The applicant's parents or guardian must sign both forms. The application form is used in the random selection process and the medical history form provides information needed to determine certification of suitability, any special medical or medication needs, and a file record for the Federal Government and participants. If these forms were not used, the Federal government's ability to oversee the Youth Conservation Corps program would be greatly impaired. The organizational and liability issues that would result from inability to collect the information needed to manage the program would be virtually insurmountable.

Description of Respondents: Individuals or households.

Number of Respondents: 20,000.

Frequency of Responses: Annually.

Total Burden Hours: 2,267.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3436 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program: Federal Collection of State Plan of Operations, Operating Guidelines and Forms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a collection currently approved for State Agency Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, administrative matters.

DATES: Comments on this notice must be received by April 26, 2010, to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments and requests for copies of this information collection to

Jane Duffield, Chief, State Administration Branch, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ms. Duffield at 703–605–0795 or via e-mail to *PADMAILBOX@fns.usda.gov.* Comments will also be accepted through the federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 818, Alexandria, Virginia 22302.

All comments will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jane Duffield at (703) 605–4385.

SUPPLEMENTARY INFORMATION:

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Expiration Date: October 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: In accordance with section 11(d) of the Food & Nutrition Act of 2008 (the Act), 7 U.S.C. 2020(B), State agencies are required to submit a Plan of Operation specifying the manner in which SNAP will be conducted. The State Plan of Operations, in accordance with current rules at 7 CFR 272.2, consists of a Federal/State Agreement, annual budget and activity statements, and specific attachments relating to the State Plan of Operation. State Plans of Operation are a one-time effort with updates that are provided as necessary.

Under section 16 of the Act, 7 U.S.C. 2025, the Secretary is authorized to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the SNAP. Under corresponding SNAP regulations at 7 CFR 272.2, the State agencies must submit annually to FNS for approval, a Budget Projection Statement (Form FNS–366A), which projects the total costs for major areas of SNAP operations, and a Program Activity Statement (Form FNS–366B), which provides a summary of SNAP operations during the preceding fiscal year. The reports are required to substantiate the costs the State agency expects to incur during the next fiscal year. Form FNS–366A is submitted annually by August 15, for the upcoming fiscal year and Form FNS–366B must be submitted no later than 45 days after the end of each State agency's fiscal year.

In fiscal year (FY) 2009, 91 percent of State agencies submitted the FNS–366A electronically and 9 percent submitted a paper report. For FY 2009, a total of 82 percent of State agencies submitted the FNS–366B electronically with the remaining 18 percent submitting paper reports.

Finally, State agencies are required to submit certain other documents to FNS for review relating to certain specific activities that the State agency may choose to do. These other submissions include but are not limited to Advance Planning Documents (APD) if the State agency wishes to acquire proposed automated data processing (ADP) services, systems or equipment; outreach plans if the State elects to do program information activities; and updates related to options exercised under the Act, as amended.

Respondents: State agencies that administer SNAP.

Number of Respondents: 53.

Estimated Number of Responses Per Respondent:

Plan of Operation Updates: 53 State agencies once a year.

Form FNS–366A: 53 State agencies once a year.

Form FNS–366B: 53 State agencies once a year.

Other APD, Plan, or Update Submissions: Up to 53 State agencies may submit one or more APD, plan or update submission averaging 4.75 submissions per respondent per year or 252 total responses.

Estimate of Burden:

Plan of Operation Updates: The State agencies submit Plan updates at an estimate of 10 hours per respondent, or 530 total hours.

Form FNS–366A: The State agencies submit Form FNS–366A at an estimate of 13 hours per respondent, or 689 total hours.

Form FNS–366B: The total burden for the collection of information for Form FNS–366B is 18 hours per respondent, or 954 hours.

Other APD, Plan, or Update Submissions: We estimate that up to 53 States may submit one or more APD, plan, or update for a total of 251.75 annual responses at an average estimate of 2.681 hours per respondent, or 675.5 hours.

Estimated Total Annual Burden on Respondents: The total annual reporting and recordkeeping burden for OMB No. 0584–0083 is estimated to be 2,848.5 hours, which is the same as the currently approved burden.

Affected public	Forms	Number of respondents	Frequency of response	Total annual responses	Time per response (hrs)	Annual burden hours
State Agencies	FNS–366A	53	1	53	13	689
	FNS–366B	53	1	53	18	954
	Plan of Operation	53	1	53	10	530
	Other APD Plan or Update.	53	4.75	251.75	2.681	675.5
Total Burden Estimates.		53				2848.5

Dated: February 4, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–3448 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Monitor-Hot Creek Rangeland Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Austin/Tonopah Ranger Districts, Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize continued livestock grazing

within the Monitor-Hot Creek Rangeland Project area. The analysis will determine if a change in management direction for livestock grazing is needed to move existing resource conditions within the Monitor-Hot Creek Rangeland Project area towards desired conditions. The project area comprises approximately 952,234 acres and is located on the Monitor and Hot Creek Mountain Ranges in Eureka, Nye and Lander Counties, Nevada.

DATES: Comments concerning the scope of the analysis must be received by March 25, 2010. The draft environmental impact statement is expected November, 2010 and the final environnental impact statement is expected April, 2011.

ADDRESSES: Send written comments to District Ranger, Austin/Tonopah Ranger Districts, P.O. Box 130, Austin, NV 89310. Comments may also be sent via e-mail to *comments-intermtn-humboldt-toiyabe-austin-tonopah@fs.fed.us,* or via facsimile to (775) 964–1451.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to or contact Vernon Keller, Project Coordinator, at 1200 Franklin Way, Sparks, Nevada 89431. The telephone number is 775–355–5356. E-mail address is *vkeller@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the proposed Federal action is to provide livestock grazing opportunities to perinittees in a way that sustains the health of the land and protects essential ecosystem functions and values.

Proposed Action

The Austin/Tonopah Ranger Districts propose to authorize continued domestic livestock grazing on approximately 816,433 acres within the Monitor-Hot Creek Rangeland Project area under a specific management regimen designed to sustain and improve the overall ecological condition of the project area. Under this proposal, we would incorporate updated direction in new grazing permits and allotment management plans to guide grazing management within the project area during the coming decade, or until amendments are warranted, based on changed condition or monitoring.

The Kelly Creek/North Monitor, White Rock, South Monitor, Table Mountain and Monitor Valley East allotments are currently vacant. Livestock grazing would be authorized in these allotments and they would be used to reduce conflicts on allotments that are currently grazed or as forage reserve allotments. These allotments comprise approximately 259,232 acres.

Monitor Winter, Horse Heaven, North Monitor Winter, Hicks Station, Wagon Johnnie, Little Fish Lake, Monitor Complex, Saulsbury and Stone Cabin allotments have active term grazing permits and would continue to have authorized grazing. These allotments comprise approximately 557,201 acres.

Morey, Hot Creek and McKinney allotments are currently vacant and would be closed. These allotments comprise approximately 135,801 acres.

Possible Alternatives

In addition to the proposed action, we have tentatively identified two additional alternatives that will be analyzed in the EIS.

(1) *Current Management Alternative:* This alternative would be a continuation of the current grazing management.

(2) *No Livestock Grazing (No Action) Alternative:* This alternative would eliminate grazing on all allotments in the project area. All livestock would be removed from the project area and existing permits would be cancelled.

Responsible Official

Steven Williams, District Ranger, Austin/Tonopah Ranger Districts, Humboldt-Toiyabe National Forest, P.O. Box 130, Austin, NV 89310.

Nature of Decision to be Made

Based on the environmental analysis on the EIS, the Austin/Tonopah District Ranger will decide whether or not to authorize grazing on the allotments within the Monitor-Hot Creek Project area in accordance with the standards in the proposed action or as modified by additional mitigation measures and monitoring requirements.

Preliminary Issues

The following are some potential issues identified through internal Forest Service scoping based on our experience with similar projects. The list is not considered all inclusive, but should be viewed as a starting point. We are asking you to help us further refine the issues and identify other issues or concerns relevant to the proposed project.

- Continued livestock grazing has to potential to affect soil quality within the project area.
- Continued livestock grazing has the potential to adversely affect water quality within the project area.
- Continued livestock grazing has the potential to affect fisheries habitat within the project area.
- Continued livestock grazing has the potential to affect vegetation, which may result in a decline in the long-term productivity of the land base.
- Continued livestock grazing has the potential to affect wildlife habitat, particularly for elk and sage grouse, within the project area.
- Continued livestock grazing has the potential to affect heritage resources within the project area.

Scoping Process

This notice of intent initiates the scoping process, which guide the development of the environmental impact statement. The Forest Service will use a mailing of information to interested parties. Public involvement will be ongoing throughout the analysis process and at certain times public input will be specifically requested. There are currently no scoping meetings planned.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: February 5, 2010.

Steven Williams,

District Ranger.

[FR Doc. 2010–3327 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0017; FV–09–378]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, March 30, 2010, from 8 a.m. to 5 p.m., and Wednesday, March 31, 2010, from 8 a.m. to 1 p.m.

ADDRESSES: The Committee meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Pamela Stanziani, Designated Federal Official, USDA, AMS, Fruit and Vegetable Programs. Telephone: (202) 690–0182. Facsimile: (202) 720–0016. E-mail: *Pamela.stanziani@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II), the Secretary of Agriculture established the Committee in August 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The Committee was re-chartered March 31, 2009 with new members appointed December 2009 by USDA from industry nominations.

AMS Deputy Administrator for Fruit and Vegetable Programs, Robert C. Keeney, serves as the Committee's Executive Secretary. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are called upon to participate in the Committee's meetings as determined by the Committee Chairperson. AMS is giving notice of the Committee meeting to the public so that they may attend and present their recommendations. Reference the date and address section of this announcement for the time and place of the meeting.

Topics of discussion at the advisory committee meeting will include the following: audit requirements, Perishable Agricultural Commodities Act program, marketing agreements, food safety, local farmer/education initiatives, commodity purchasing programs, and work group assignments and orientation for the new members.

Those parties that would like to speak at the meeting should register on or before March 1, 2010. To register as a speaker, please e-mail your name, affiliation, business address, e-mail address, and phone number to Ms. Pamela Stanziani at: *Pamela.stanziani@ams.usda.gov* or facsimile to (202) 720–0016. Speakers who have registered in advance will be given priority. Groups and individuals may submit comments for the Committee's consideration to the same e-mail address. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting. All presentations must be provided and displayed electronically, and submitted upon designated due date.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies.

If you require special accommodations, such as a sign language interpreter, please use either contact name listed above.

Dated: February 17, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–3447 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Cooperation Treaty.

Form Number(s): PCT/RO/101, PCT/RO/134, PCT/IB/372, PCT/IPEA/401, PTO–1382, PTO–1390, PTO/SB/61/PCT, PTO/SB/64/PCT.

Agency Approval Number: 0651–0021.

Type of Request: Revision of a currently approved collection.

Burden: 341,840 hours annually.

Number of Respondents: 363,809 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to 8 hours to gather the necessary information, prepare the appropriate form or documents, and submit the information to the USPTO.

Needs and Uses: The purpose of the Patent Cooperation Treaty (PCT) is to provide a standardized filing format and procedure that allows an applicant to seek protection for an invention in several countries by filing one international application in one location, in one language, and paying one initial set of fees. The information in this collection is used by the public to submit a patent application under the PCT and by the USPTO to fulfill its obligation to process, search, and examine the application as directed by the treaty. The USPTO is updating this information collection to reflect the current practice and fee structure for PCT applications entering the national stage at the USPTO. A form is being added to this collection for the previously approved information requirement for the withdrawal of an international application. This form (PCT/IB/372) is developed and maintained by the World Intellectual Property Organization (WIPO).

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

• *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0021 PCT copy request" in the subject line of the message.

• *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and

Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 25, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: February 16, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–3481 Filed 2–22–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

ADDRESSES: American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005; telephone (202) 682–8000, *http://www.api.org.*

FOR FURTHER INFORMATION CONTACT: All contact individuals listed in the supplementary information section of this notice may be reached at the American Petroleum Institute.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, materials, operations, and processes for the petroleum and natural gas industry. These standards are used by both private industry and by governmental agencies. All interested persons should contact the appropriate source as listed for further information.

Exploration & Production:

RP 10B–6, Recommended Practice on Determining the Static Gel Strength of Cement Formulations, 1st Ed.

RP 13D, Rheology and Hydraulics of Oil-well Drilling Fluids, 6th Ed.

RP 17A–A, Addendum to Design and Operation of Subsea Production Systems—Petroleum and natural gas industries-Design and operation of subsea production systems-Part 1: General requirements and recommendations, 4th Ed.

RP 17Q, Recommended Practice for Subsea Qualification, 1st Ed.

RP 19G4, Practices for Side-pocket Mandrels and Related Equipment, 1st Ed.

RP 19G9, Design, Operation, and Troubleshooting of Dual Gas-lift Wells, 1st Ed.

RP 2EQ, Seismic Design Procedures and Criteria for Offshore Structures, 1st Ed.

RP 2MOP, Marine Operations, 1st Ed.

RP 2T, Planning, Designing and Constructing Tension Leg Platforms, 3rd Ed.

RP 5LT, Recommended Practice for Truck Transportation of Line Pipe, 1st Ed.

Spec 10A, Specification for Cements and Materials for Well Cementing, 24th Ed.

Spec 11B, Specification for Sucker Rods, 27th. Ed.

Spec 13A, Specification for Drilling Fluid Materials, 18th Ed.

Spec 17D, Subsea Wellhead and Christmas Tree Equipment, 2nd Ed.

Spec 17E, Specification for Subsea Umbilicals, 4th Ed.

Spec 19G1, Side-pocket Mandrels, 1st Ed.

Spec 19G2, Flow-control Devices for Side-pocket Mandrels, 1st Ed.

Spec 2SF, Manufacture of Structural Steel Forgings for Primary Offshore Applications, 1st Ed.

Spec 5CRA, Specification for Corrosion Resistant Alloy Seamless Tubes for Use as Casing, Tubing and Coupling Stock, 1st Ed.

Spec 5CT, Specification for Casing and Tubing—Petroleum and natural gas industries—Steel pipes for use as casing or tubing for wells, 9th Ed.

Spec 5ST, Specification for Coiled Tubing, 1st Ed.

Spec 6A, Specification for Wellhead and Christmas Tree Equipment, 20th Ed.

Spec 7K, Drilling and Well Servicing Equipment, 5th Ed.

Spec 8C–A3, Addendum 3 to Specification for Drilling and Production Hoisting Equipment (PSL 1 and PSL 2)—(Modified), Petroleum and natural gas industries—Drilling and production equipment-Hoisting equipment, 4th Ed.

Spec Q1–A1, Addendum 1 to Specification for Quality Programs for the Petroleum and Natural Gas Industry, 8th Ed.

FOR FURTHER INFORMATION CONTACT: Roland Goodman, Standards Department, *e-mail: (goodmanr@api.org).*

Meetings/Conferences: The Exploration & Production Standards Conference will be held in Washington, DC, June 28–July 2, 2010. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Marketing:

RP 1615, Installation of Underground Petroleum Storage Systems, 6th Ed.

RP 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations, 2nd Ed.

RP 2611, Terminal Piping Inspection, 1st Ed.

FOR FURTHER INFORMATION CONTACT: Steve Crimaudo, Standards Department, *e-mail: (crimaudos@api.org).*

Petroleum Measurement:

MPMS Ch. 12.1.1, Calculation of Static Petroleum Quantities, Part 1—Upright Cylindrical Tanks and Marine Vessels, 3rd Ed.

MPMS Ch. 12.1.2, Calculation of Static Petroleum Quantities, Part 2—Calculation Procedures for Tank Cars, 2nd Ed.

MPMS Ch. 13.3, Measurement Uncertainty, 1st Ed.

MPMS Ch. 14.1, Collecting and Handling of Natural Gas Samples for Custody Transfer, 7th Ed.

MPMS Ch. 19.1, Evaporative Loss From Fixed-roof Tanks (Previously Publication 2518), 4th Ed.

MPMS Ch. 19.2, Evaporative Loss From Floating-roof Tanks, 3rd Ed.

MPMS Ch. 19.3, Part H, Tank Seals and Fittings Certification—Administration, 2nd Ed.

MPMS Ch. 19.4, Recommended Practice for Speciation of Evaporative Losses, 3rd Ed.

MPMS Ch. 2.2D, Calibration of Upright Cylindrical Tanks Using the Internal Electro-optical Distance Ranging (EODR) Method (ANSI/API MPMS 2.2D–2010), 2nd Ed.

MPMS Ch. 21.1, Electronic Gas Measurement, 2nd Ed.

MPMS Ch. 22.2, Testing Protocols—Differential Pressure Flow Measurement Devices, 2nd Ed.

MPMS Ch. 22.4, Testing Protocols—Pressure, Differential Pressure, and

Temperature Measuring Devices, 1st Ed.
MPMS Ch. 22.5, Testing Protocols—Electronic Flow Computer Calculations, 1st Ed.
MPMS Ch. 4.5, Master-Meter Provers, 3rd Ed.
MPMS Ch. 4.9.3, Methods of Calibration for Displacement and Volumetric Tank Provers, Part 3—Determination of the Volume of Displacement Provers by the Master Meter Method of Calibration, 1st Ed.
MPMS Ch. 4.9.4, Methods of Calibration for Displacement and Volumetric Tank Provers, Part 4—Determination of the Volume of Displacement and Tank Provers by the Gravimetric Method of Calibration, 1st Ed.
MPMS Ch. 8.1–SP, Manual Sampling of Petroleum and Petroleum Products—Spanish, 3rd Ed.
MPMS Ch. 9.1, Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, 3rd Ed.
MPMS Ch. 9.2, Standard Test Method for Density or Relative Density of Light Hydrocarbons by Pressure Hydrometer, 3rd Ed.
MPMS Ch. 9.3, Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method, 3rd Ed.
TR 2570, Technical Report for the Determination of Water in Crude Oil and Petroleum Products Using On-Line Water Monitors, 1st Ed.

FOR FURTHER INFORMATION CONTACT:
Paula Watkins, Standards Department, *e-mail: (watkinsp@api.org)*

Meetings/Conferences: The Spring Committee on Petroleum Measurement Meeting will be held in Dallas, Texas, March 15–18, 2010. The Fall Committee on Petroleum Measurement Meeting will be held in Denver, Colorado, October 4–8, 2010. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Pipeline:
RP 1109, Marking Liquid Petroleum Pipeline Facilities, 4th Ed.
RP 1162, Public Awareness Programs for Pipeline Operators, 2nd Ed.
RP 1167, Alarm Management, 1st Ed.
RP 2200, Repairing Crude Oil, Liquefied Petroleum Gas and Product Pipelines, 4th Ed.
Std 1160, Managing System Integrity for Hazardous Liquid Pipelines, 2nd Ed.

FOR FURTHER INFORMATION CONTACT:
Ed Baniak, Standards Department, *e-mail: (baniake@api.org).*

Refining:
RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, 3rd Ed.
RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2, 2nd Ed.
RP 520 Pt 2, Sizing, Selection, and Installation of Pressure-Relieving Devices in Refineries, Part II, Installation, 6th Ed.
RP 540, Electrical Installations in Petroleum Processing Plants, 5th Ed.
RP 578, Material Verification Program for New and Existing Alloy Piping Systems, 2nd Ed.
RP 621, Reconditioning of Metallic Gate, Globe, and Check Valves, 3rd Ed.
RP 688, Recommended Practice for Pulsation and Vibration Control in Reciprocating Compressor Systems, 1st Ed.
RP 934–A–A1, Addendum 1 to Materials and Fabrication Requirements for 2–1/4/3Cr Alloy Steel Heavy Wall Pressure Vessels for High Temperature, High Pressure Hydrogen Service, 2nd Ed.
RP 934–E, Materials and Fabrication of ¼;Cr–½;Mo Steel Pressure Vessels for Service above 825 °F (440 °C), 1st Ed.
Std 541, Form-Wound Squirrel-Cage Induction Motors 500 Horsepower and Larger, 5th Ed.
Std 607/ISO 10497, Testing of Valves-Fire Type-testing Requirements, 6th Ed.
Std 620–A2, Addendum 2 to Design and Construction of Large, Welded, Low-Pressure Storage Tanks, 11th Ed.
Std 653–A1, Addendum 1 to Tank Inspection, Repair, Alteration, and Reconstruction, 4th Ed.
Std 670, Machinery Protection Systems, 5th Ed.
Std 673, Centrifugal Fans for Petroleum, Chemical and Gas Industry Services, 3rd Ed.
Std 674, Positive Displacement Pumps-Reciprocating, 3rd Ed.
Std 754, Process Safety Performance Indicators for the Refining and Petrochemical Industries, 1st Ed.
Std 755, Fatigue Prevention Guidelines for the Refining and Petrochemical Industries, 1st Ed.
TR 934–B, Fabrication Considerations for Vanadium-Modified Cr-Mo Steel Heavy Wall Pressure Vessels, 1st Ed.
TR 934–D, Technical Report on the Materials and Fabrication Issues of 1¼Cr-½Mo and 1Cr-½Mo Steel Pressure Vessels, 1st Ed.
TR 938–C, Use of Duplex Stainless Steels in the Oil Refining Industry, 2nd Ed.

FOR FURTHER INFORMATION CONTACT:
David Soffrin, Standards Department, *e-mail:(soffrind@api.org).*

Meetings/Conferences: The Spring Refining and Equipment Standards Meeting will be held in New Orleans, Louisiana, April 26–28, 2010. The Fall Refining and Equipment Standards Meeting will be held in Nashville, Tennessee, November 15–17, 2010. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Safety and Fire Protection:
Publ 2218, Fireproofing Practices in Petroleum and Petrochemical Processing Plants, 3rd Ed.
RP 2350, Overfill Protection for Storage Tanks in Petroleum Facilities, 4th Ed.

FOR FURTHER INFORMATION CONTACT:
David Soffrin, Standards Department, *e-mail: (soffrind@api.org).*

For Additional Information on the overall API standards program, Contact: David Miller, Standards Department, *e-mail: miller@api.org.*

Dated: February 5, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–3500 Filed 2–22–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application 10–00001]

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review from Alaska Longline Cod Commission (“ALCC”)

SUMMARY: The Export Trading Company Affairs (“ETCA”) unit, Office of Competition and Economic Analysis, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (“Certificate”). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT:
Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export

Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register**, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked "privileged" or "confidential business information" will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmitted by E-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 10–00001." A summary of the application follows.

Summary of the Application

Applicant: Alaska Longline Cod Commission ("ALCC") c/o Mundt MacGregor L.L.P., 271 Wyatt Way NE., Suite 106, Bainbridge Island, Washington 98110, Contact: Duncan R. McIntosh, Attorney, Telephone: (206) 624–5950.

Application No.: 10–00001.

Date Deemed Submitted: February 2, 2010.

Members (in addition to applicant): ALCC members include the following entities: Alaskan Leader Fisheries, Inc., Lynden, Washington; Alaskan Leader Seafoods LLC, Lynden, Washington; Gulf Mist, Inc., Everett, Washington; Deep Sea Fisheries, Inc., Everett, Washington; Aleutian Spray Fisheries, Inc., Seattle, Washington; Pathfinder Fisheries LLC, Seattle, Washington; Liberator Fisheries, LLC, Seattle, Washington; Siberian Sea Fisheries, LLC, Seattle, Washington; Akulurak LLC, Seattle, Washington; Romanzoff Fishing Company, Seattle, Washington; Beauty Bay Washington, LLC, Seattle, Washington; Tatoosh Seafoods LLC, Seattle, Washington; Blue North Fisheries, Inc, Seattle, Washington; Blue North Trading Company, LLC, Seattle, Washington; Clipper Group, Ltd, Seattle, Washington; Clipper Seafoods, Ltd., Seattle, Washington; Bering Select Seafoods Company, Seattle, Washington; Glacier Bay Fisheries LLC, Seattle, Washington; Glacier Fish Company LLC, Seattle, Washington; and Shelfords' Boat, Ltd., Mill Creek, Washington.

ALCC seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

Export Trade

Products

ALCC plans to export frozen at-sea, headed and gutted, Alaska cod (Gadus macrocephalus), also known as Pacific cod. Headed and gutted means the head and viscera are removed prior to freezing. Frozen-at-sea means that the export product is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

ALCC and its members seek certification for the following activities and exchanges of information:

1. Each member will from time to time independently determine in its sole discretion (i) the quantity of export product that it makes available for sale in export markets, and (ii) whether any portion of such quantity will be sold independently by it, be sold in cooperation with some or all of the other members, or be made available to ALCC for sale in export markets. ALCC may not require any member to export any minimum quantity of export product.

2. ALCC and/or its members may enter into agreements to act in certain countries or markets as the members' exclusive or non-exclusive export intermediary(ies) for the quantity of export product dedicated by each member for sale by ALCC or any member(s) in that country or market. In any such agreement (i) ALCC or the member(s) acting as the exclusive export intermediary may agree not to represent any other supplier of export product with respect to one or more export market(s), and (ii) members may agree that they will export the quantity of export product dedicated for sale in such export markets only through ALCC or the member(s) acting as an exclusive export intermediary, and that they will not export the export product otherwise, either directly or through any other export intermediary.

3. ALCC and/or one or more of its members may engage in joint bidding or selling arrangements for export markets and allocate sales resulting from such arrangements among the members.

4. The members may refuse to deal with export intermediaries other than ALCC and its members.

5. ALCC may, for itself and on behalf of its members, by agreement with its members or its members' distributors or agents, or on the basis of its own determination:

a. Establish the prices at which export product will be sold in export markets;

b. Establish standard terms of sale of export product;

c. Establish standard quality grades for export product;

d. Establish target prices for sales of export product by its members in export markets, with each member remaining free to deviate from such target prices in its sole discretion;

e. Subject to the limitations set forth in paragraph 1, above, establish the quantity of export product to be sold in export markets;

f. Allocate among the members export markets or customers in the export markets;

g. Refuse to quote prices for, or to market or sell, export product in export markets; and

h. Engage in joint promotional activities aimed at developing existing or new export markets, such as advertising and trade shows.

6. ALCC may, for itself and on behalf of its members, contact non-member suppliers of export product to elicit information relating to price, volume delivery schedules, terms of sale, and other matters relating to such suppliers'

sales or prospective sales in export markets.

7. Subject to the limitations set forth in paragraph 1, above, ALCC and its members may agree on the quantities of export product and the prices at which ALCC and its members may sell export product in and for export markets, and may also agree on territorial and customer allocations in export markets among the members.

8. ALCC and its members may enter into exclusive and non-exclusive agreements appointing third parties as export intermediaries for the sale of export product in export markets. Such agreements may contain the price, quantity, territorial and customer restrictions for export markets contained in paragraph 5, above.

9. ALCC and its members may solicit individual non-member suppliers of Product to sell such Product to ALCC or members for sale in export markets.

10. ALCC may compile for, collect from, and disseminate to its members, and the members may discuss among themselves, either in meetings conducted by ALCC or independently via telephone and other available and appropriate modes of communication, the information described in Item 14 below.

11. ALCC and its members may prescribe conditions for withdrawal of members from and admission of members to ALCC.

12. ALCC may, for itself or on behalf of its members, establish and implement a quality assurance program for export product, including without limitation establishing, staffing, and operating a laboratory to conduct quality testing, promulgating quality standards or grades, inspecting export product samples and publishing guidelines for and reports of the results of laboratory testing.

13. ALCC may conduct meetings of its members to engage in the activities described in paragraphs 1 through 12, above.

14. ALCC and its members seek to exchange and discuss the following types of export-related information:

a. Sales and marketing efforts, and activities and opportunities for sales of export product, including but not limited to selling strategies and pricing, projected demand for export product, standard or customary terms of sale in export markets, prices and availability of export product from competitors, and specifications for export product by customers in export markets;

b. Price, quality, quantity, source, and delivery dates of export product available from the members for export including but not limited to export inventory levels and geographic availability;

c. Terms and conditions of contracts for sales to be considered and/or bid on by ALCC and its members;

d. Joint bidding or selling arrangements and allocation of sales resulting from such arrangements among the members, including each member's share of the previous calendar year's total foreign sales;

e. Expenses specific to exporting to and within export markets, including without limitation transportation, trans- or intermodal shipments, cold storage, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs duties, and taxes;

f. U.S. and foreign legislation regulations and policies affecting export sales; and

g. ALCC's and/or its members' export operations, including without limitation, sales and distribution networks established by ALCC or its members in export markets, and prior export sales by members (including export price information).

Dated: February 17, 2010.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2010–3422 Filed 2–22–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold a meeting on Monday, March 15, 2010 from 8:30 a.m. to 5:30 p.m. and Tuesday, March 16, 2010, from 8:30 a.m. to 4 p.m. The primary purpose of this meeting is to develop the Committee's draft report to the NIST Director. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at *http://nehrp.gov/*.

DATES: The ACEHR will hold a meeting on Monday, March 15, 2010, from 8:30 a.m. until 5:30 p.m. The meeting will continue on Tuesday, March 16, 2010, from 8:30 a.m. until 4 p.m. The meeting will be open to the public.

ADDRESSES: The meeting will be held in the Heritage Room, in the Administration Building at NIST in Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Dr. Hayes' e-mail address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 15 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/*.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advisory Committee on Earthquake Hazards Reduction (ACEHR) will hold a meeting on Monday, March 15, 2010, from 8:30 a.m. until 5:30 p.m. The meeting will continue on Tuesday, March 16, 2010, from 8:30 a.m. until 4 p.m. The meeting will be held in the Heritage Room, in the Administration Building at NIST in Gaithersburg, Maryland. The primary purpose of this meeting is to develop the Committee's draft report to the NIST

Director. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at *http://nehrp.gov/.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On March 16, 2010, approximately one-half hour will be reserved at the end of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8630, Gaithersburg, Maryland 20899–8630, via fax at (301) 975–4032, or electronically by e-mail to *info@nehrp.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Monday, March 1, 2010, in order to attend. Please submit your name, time of arrival, e-mail address, and phone number to Michelle Harman. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mrs. Harman's e-mail address is *michelle.harman@nist.gov* and her phone number is (301) 975–5324.

Dated: February 17, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–3505 Filed 2–22–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent No. 6,088,679 (Application No. 08/980,908), titled "Workflow Management Employing Role-based Access Control," NIST Docket No. 96–052 to Rockwise, Inc., having a place of business at 223 Surnac Circle, Morgantown, WV 26508. The grant of the license would be for the field of use: HealthCare Information Technology.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, Phone 301–975–2691.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register** on March 4, 1998.

U.S. Patent No. 6,088,679 is owned by the U.S. government, as represented by the Secretary of Commerce. The patent involves a workflow sequence specified by a process definition that is managed by a workflow management system which enacts each segment in the order specified by that process definition. Role-based access control (RBAC) is used to define membership of individuals in groups, *i.e.,* to assign individuals to roles, and to then activate the roles with respect to the process at appropriate points in the sequence. Any individual belonging to the active role can perform the next step in the business process. Changes in the duties and responsibilities of individuals as they change job assignments are greatly simplified, as their role memberships are simply reassigned; the workflow process is unaffected.

Dated: February 17, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–3501 Filed 2–22–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2010–0002]

National Medal of Technology and Innovation Nomination Evaluation Committee

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: The Department of Commerce (United States Patent and Trademark Office) is requesting nominations of individuals to serve on the National Medal of Technology and Innovation Nomination Evaluation Committee. The United States Patent and Trademark Office will consider nominations received in response to this notice as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criteria.

DATES: Please submit nominations within 60 days of the publication of this notice.

ADDRESSES: Nominations should be submitted to Richard Maulsby, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450. Nominations also may be submitted via fax: (571) 270–9100 or by electronic mail to: *nmti@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Maulsby, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, telephone (571) 272–8333, or electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background: The committee was established in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2). The following provides information about the committee and membership:

- Committee members are appointed by and serve at the discretion of the Secretary of Commerce. The committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711), as amended August 9, 2007.
- The committee functions solely as an advisory body under the FACA. Members are appointed to the 12-member committee for a term of three years. Each will be reevaluated at the

conclusion of the three-year term with the prospect of renewal, pending advisory committee needs and the Secretary's concurrence. Selection of membership is made in accordance with applicable Department of Commerce guidelines.

• Members are responsible for reviewing nominations and making recommendations for the Nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the committee must have an understanding of, and experience in, developing and utilizing technological innovation and/or be familiar with the education, training, employment and management of technological manpower.

• Under the FACA, membership on a committee must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following sub-sectors of the technology enterprise:

Medical Innovations/Bioengineering and Biomedical Technology;

Technology Management/Computing/IT/Manufacturing Innovation;

Technological Manpower/Workforce Training/Education.

Committee members generally are Chief Executive Officers or former Chief Executive Officers, former winners of the National Medal of Technology and Innovation; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. As such, they not only offer the stature of their positions but also possess intimate knowledge of the forces determining future directions for their organizations and industries. The committee as a whole is balanced in representing geographical, professional, and diverse interests.

Nomination Information:

• Nominees must be United States citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology and Innovation, and must uphold the confidential nature of an independent peer review and competitive selection process.

• The United States Patent and Trademark Office is committed to equal opportunity in the workplace and seeks a broad-based and diverse committee membership.

Dated: February 16, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–3398 Filed 2–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 0911121400–0091–02]

Summer Undergraduate Research Program Extension of Due Date for Proposals

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce

ACTION: Notice.

SUMMARY: Due to extreme weather conditions in the Mid-Atlantic United States, NIST is extending the deadline for proposal submission for its Summer Undergraduate Research Fellowship Program competition to 5 p.m. Eastern time, Friday, February 19, 2010, for SURF Gaithersburg, and noon Mountain Time, Friday, February 19, 2010, for SURF Boulder.

DATES: Paper and electronic submissions must be received no later than 5 p.m. Eastern time, Friday, February 19, 2010, for SURF Gaithersburg, and noon Mountain Time, Friday, February 19, 2010, for SURF Boulder.

ADDRESSES: Paper submissions for SURF Gaithersburg must be sent to Ms. Anita Sweigert, Administrative Coordinator, SURF NIST Gaithersburg Programs, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400. Paper applications for SURF Boulder must be sent to Ms. Cynthia Kotary, Administrative Coordinator, SURF NIST Boulder Programs, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3337. Electronic submissions must be sent as specified in the original program announcement, *Summer Undergraduate Research Fellowships (SURF) Gaithersburg and Boulder Programs: Availability of Funds,* 74 FR 66291 (Dec. 15, 2009).

FOR FURTHER INFORMATION CONTACT: Program questions for SURF Gaithersburg should be addressed to Ms. Anita Sweigert, Administrative Coordinator, SURF NIST Gaithersburg Programs, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, *Tel:* (301) 975–4200, *E-mail: anita.sweigert@nist.gov.* The *SURF NIST Gaithersburg Program* Web site is: *http://www.surf.nist.gov/surf2.htm.* Program questions for SURF Boulder should be addressed to Ms. Cynthia Kotary, Administrative Coordinator, SURF NIST Boulder Programs, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3337, *Tel:* (303) 497–3319, E-mail: *kotary@boulder.nist.gov;* Web site: *http://www.nist.gov/surfboulder/.* All grants related administration questions concerning this program should be directed to Hope Snowden, NIST Grants and Agreements Management Division at (301) 975–6002 or *hope.snowden@nist.gov,* or for assistance with using Grants.gov contact *support@grants.gov.*

SUPPLEMENTARY INFORMATION: On December 15, 2009, the National Institute of Standards and Technology's (NIST) Gaithersburg and Boulder Summer Undergraduate Research Programs (SURF) announced that they were soliciting proposals for financial assistance (74 FR 66219). The due date for submission of all proposals was 5 p.m. Eastern Time, Tuesday, February 16, 2010. Due to extreme weather conditions and associated power outages, Internet outages, and closings of public facilities in the Mid-Atlantic area, including a shut-down of the Federal government and universities, some proposers did not have the opportunity to timely prepare applications. In order to provide all interested parties a fair and reasonable opportunity to submit a proposal, NIST is extending the solicitation period until 5 p.m. Eastern Time, Friday, February 19, 2010, for SURF Gaithersburg, and noon Mountain Time, Friday, February 19, 2010, for SURF Boulder. Electronic and paper proposals received between the original deadline of 5 p.m. Eastern Time February 16, 2010, and 5 p.m. Eastern Time February 19, 2010 for SURF Gaithersburg, or between the original deadline of 5 p.m. Mountain Time February 16, 2010 and noon Mountain Time February 19, 2010 for SURF Boulder, are deemed timely.

All SURF application and competition requirements and information announced in the December 15, 2009 **Federal Register** notice apply to proposals submitted during the extended time period. The review, selection, and award processing time for SURF remains unchanged.

Executive Order 12372 (Intergovernmental Review of Federal Programs). Proposals under this

program are not subject to Executive Order 12372.

Executive Order 13132 (Federalism). This notice does not contain policies with Federalism implications as defined in Executive Order 13132.

Executive Order 12866 (Regulatory Planning and Review). This notice is not a significant regulatory action under Sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it does not materially alter the budgetary impact of a grant program and does not raise novel policy issues. This notice is not an "economically significant" regulatory action under Section 3(f)(1) of the Executive Order, as it does not have an effect on the economy of $100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: February 17, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–3507 Filed 2–22–10; 8:45 am]

BILLING CODE 3510–13–P

COMMISSION ON CIVIL RIGHTS

Hearing on the Department of Justice's Actions Related to the New Black Panther Party Litigation and its Enforcement of Section 11(b) of the Voting Rights Act

Correction

Notice document 2010–3168 appearing on page 7441 in the issue of Friday, February 19, 2010 was included in error. The document was withdrawn and should not have appeared in the issue.

[FR Doc. C1–2010–3168 Filed 2–22–10; 12:00 pm]

BILLING CODE 1505–01–D

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, February 16, 2010, 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Unblockable Drains/Public Accommodations—Virginia Graeme Baker Pool and Spa Safety Act/ Minimum State Requirements for Grants.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: February 12, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–3323 Filed 2–22–10; 8:45 am]

BILLING CODE 6355–01–M

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act (NEPA) Draft Guidance, Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability, Draft Guidance, "Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act."

SUMMARY: On February 18, 2010, the Council on Environmental Quality (CEQ) announced four steps to modernize, reinvigorate, and ease the use and increase the transparency of implementation of the National Environmental Policy Act (NEPA). Enacted in 1970, NEPA is a fundamental tool used to harmonize our economic, environmental, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. Additionally, NEPA emphasizes public involvement in government actions affecting the environment by requiring that the benefits and the risks associated with proposed actions be assessed and publicly disclosed.

CEQ, which is charged with implementing NEPA, recognizes that it is a visionary and versatile law that can be used effectively to address new environmental challenges facing our Nation and also to engage the public widely and effectively. Furthermore, CEQ wants to develop more effective and accessible tools for citizen involvement in government decision-making. These actions are designed to provide carefully-tailored new assessment and reporting requirements, facilitate agency compliance with NEPA, and enhance the quality of public involvement in governmental decisions relating to the environment.

DATES: Comments should be submitted on or before April 9, 2010.

ADDRESSES: The NEPA Draft Guidance documents are available at *http://www.nepa.gov.* Comments on the NEPA Draft Guidance "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" should be submitted electronically to *CE.guidance@ceq.eop.gov,* or in writing to The Council on Environmental Quality, *Attn:* Ted Boling, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ted Boling, Senior Counsel, at (202) 395–5750.

SUPPLEMENTARY INFORMATION: Many Federal actions do not have significant effects on the environment. When these actions fall into broad categories of activities, agencies may apply a "categorical exclusion" from further NEPA review. This draft guidance clarifies the rules for categorical exclusions and ensures that there is a concise public record when agencies apply them. While CEQ previously has sought public comments on this matter, this guidance provides additional clarifications, so it will seek additional public comment for 45 days. Draft guidance documents are now available at the Council on Environmental Quality Web site at *http://www.nepa.gov.*

Public comments are requested on or before April 9, 2010.

February 18, 2010.

Nancy Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2010–3531 Filed 2–22–10; 8:45 am]

BILLING CODE 3125–W0–P

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act (NEPA) Draft Guidance, "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions."

AGENCY: Council On Environmental Quality.

ACTION: Notice of Availability, Draft Guidance, "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions."

SUMMARY: On February 18, 2010, the Council on Environmental Quality (CEQ) announced four steps to modernize, reinvigorate, and ease the use and increase the transparency of implementation of the National Environmental Policy Act (NEPA). Enacted in 1970, NEPA is a fundamental tool used to harmonize our economic, environmental, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. Additionally, NEPA emphasizes public involvement in government actions affecting the environment by requiring that the benefits and the risks associated with proposed actions be assessed and publicly disclosed.

CEQ, which is charged with implementing NEPA, recognizes that it is a visionary and versatile law that can be used effectively to address new environmental challenges facing our nation and also to engage the public widely and effectively. Furthermore, CEQ wants to develop more effective and accessible tools for citizen involvement in government decision-making. These actions are designed to provide carefully-tailored new assessment and reporting requirements, facilitate agency compliance with NEPA, and enhance the quality of public involvement in governmental decisions relating to the environment.

DATES: Comments should be submitted on or before May 24, 2010.

ADDRESSES: The NEPA Draft Guidance documents are available at *http://www.nepa.gov.* Comments on the NEPA Draft Guidance "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" should be submitted electronically to GCC.guidance@ceq.eop.gov, or in writing to The Council on Environmental Quality, *Attn:* Ted Boling, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ted Boling, Senior Counsel, at (202) 395–5750.

SUPPLEMENTARY INFORMATION: CEQ is issuing draft guidance for public comment on when and how Federal agencies must consider the impacts of proposed Federal actions on global climate change, as well as the expected environmental effects from climate change that may be relevant to the design of the proposed Federal action. CEQ has been asked to provide guidance on this subject informally by Federal agencies and formally by a petition under the Administrative Procedure Act. The draft guidance explains how Federal agencies should analyze the environmental impacts of greenhouse gas emissions and climate change when they describe the environmental impacts of a proposed action under NEPA by (1) providing practical tools for agency reporting, including a presumptive threshold of 25,000 metric tons of carbon dioxide equivalent emissions from the proposed action to trigger consideration of a quantitative analysis, and (2) suggestions to agencies on how to assess the effects of climate change on the proposed action, and, in turn, on the design of agency actions. CEQ will seek public comment on this guidance for 90 days. Draft guidance documents are now available at the Council on Environmental Quality Web site at *http://www.nepa.gov.*

Public comments are requested on or before May 24, 2010.

February 18, 2010.

Nancy Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2010–3532 Filed 2–22–10; 8:45 am]

BILLING CODE 3125–W0–P

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act (NEPA) Draft Guidance, "NEPA Mitigation and Monitoring."

AGENCY: Council On Environmental Quality.

ACTION: Notice of Availability, Draft Guidance, "NEPA Mitigation and Monitoring."

SUMMARY: On February 18, 2010, the Council on Environmental Quality (CEQ) announced four steps to modernize, reinvigorate, and ease the use and increase the transparency of implementation of the National Environmental Policy Act (NEPA). Enacted in 1970, NEPA is a fundamental tool used to harmonize our economic, environmental, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. Additionally, NEPA emphasizes public involvement in government actions affecting the environment by requiring that the benefits and the risks associated with proposed actions be assessed and publicly disclosed.

CEQ, which is charged with implementing NEPA, recognizes that it is a visionary and versatile law that can be used effectively to address new environmental challenges facing our nation and also to engage the public widely and effectively. Furthermore, CEQ wants to develop more effective and accessible tools for citizen involvement in government decision-making. These actions are designed to provide carefully-tailored new assessment and reporting requirements, facilitate agency compliance with NEPA, and enhance the quality of public involvement in governmental decisions relating to the environment.

DATES: Comments should be submitted on or before May 24, 2010.

ADDRESSES: The NEPA Draft Guidance documents are available at *http://www.nepa.gov.*

Comments on the NEPA Draft Guidance "NEPA Mitigation and Monitoring" should be submitted electronically to *Mitigation.guidance@ceq.eop.gov*, or in writing to The Council on Environmental Quality, *Attn:* Ted Boling, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ted Boling, Senior Counsel, at (202) 395–5750.

SUPPLEMENTARY INFORMATION: Draft Guidance Clarifying (1) the Appropriateness of "Findings of No Significant Impact" and (2) Specifying the Need for Ongoing Monitoring of Environmental Mitigation Commitments: Many Federal actions receive an environmental review, known as an Environmental Assessment. In those instances, NEPA compliance is usually completed with a "Finding of No Significant Impact" (FONSI) on the environment and a more

detailed Environmental Impact Statement is not required. The draft guidance clarifies that the environmental impacts of a proposed action may be mitigated to the point when the agency may make a FONSI determination, and thereby ease the NEPA review requirements. When the FONSI depends on successful mitigation, however, such mitigation requirements should be made public and be accompanied by monitoring and reporting. The draft guidance reinforces and also applies to monitoring and reporting of mitigation commitments agencies make in an EIS and the Record of Decision that follows. CEQ has issued this draft guidance for 90 days of public comment. Draft guidance documents are now available at the Council on Environmental Quality Web site at *http://www.nepa.gov.*

Public comments are requested on or before May 24, 2010.

February 18, 2010.

Nancy Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2010–3535 Filed 2–22–10; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Intent To Prepare a Joint Environmental Impact Statement and Environmental Impact Report for the Lower Walnut Creek General Reevaluation Report

AGENCY: Department of the Army, U.S. Army Corps of Engineers; DOD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Army Corps of Engineers, Sacramento District (USACE) intends to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) for the Lower Walnut Creek General Reevaluation Report (LWCGRR). USACE will serve as lead agency for compliance with NEPA, and the Contra Costa County Flood Control and Water Conservation District (CCCFCWCD) will serve as lead agency for compliance with CEQA. The LWCGRR will evaluate alternatives, including a locally preferred plan, for providing flood risk management and ecosystem restoration along the northern portion of the Walnut Creek watershed in the Central Coast of California. The approximate drainage area of the proposed action and analysis is 180 square miles.

DATES: Written comments regarding the scope of the environmental analysis should be received by March 23, 2010.

ADDRESSES: Written comments concerning this study and requests to be included on the LWCGRR mailing list should be submitted to Ms. Jamie LeFevre, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Ms. Jamie LeFevre via telephone at (916) 557–6693, e-mail at *Jamie.M.Lefevre@usace.army.mil*, or mail at (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* USACE is preparing an EIS/EIR to analyze the environmental impacts associated with a range of alternatives for providing flood damage reduction and ecosystem restoration along the northern portion of the Walnut Creek watershed (Figure 1).

2. *Alternatives.* The EIS/EIR will address an array of alternatives for providing flood risk management within the project area. Alternatives analyzed during the investigation may include, but are not limited to, a combination of one or more of the following flood risk management measures: modifying the channel cross section and building setback levees along the lower reaches of the creek to recreate a larger floodplain; increasing conveyance by raising levees; widening channels and floodway areas; dredging; and various floodplain management measures. Ecosystem restoration measures may include, but are not limited to: restoring riparian, wetland, and floodplain habitats for habitat restoration and/or providing fish passage.

3. *Scoping Process.*

a. A public scoping meeting will be held to present an overview of the LWCGRR and the EIS/EIR process, and to afford all interested parties with an opportunity to provide comments regarding the scope of analysis and potential alternatives. The public scoping meeting will be held at the Contra Costa County Public Works Department at 255 Glacier Drive in Martinez, CA on February 22, 2010, from 4 p.m. to 8 p.m.

b. Potentially significant issues to be analyzed in depth in the EIS/EIR include project specific and cumulative effects on hydraulics, wetlands and other waters of the U.S., vegetation and wildlife resources, special-status species, esthetics, cultural resources, recreation, land use, fisheries, water quality, air quality, and transportation.

c. USACE will consult with the State Historic Preservation Officer to comply with the National Historic Preservation Act and with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to comply with the Endangered Species Act. USACE is also coordinating with the U.S. Fish and Wildlife Service to comply with the Fish and Wildlife Coordination Act. In addition, USACE or CCCFCWCD will need to obtain permits from the California Department of Fish and Game and the San Francisco Bay Regional Water Quality Control Board.

d. A 45-day public review period will be provided for all interested parties individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS/EIR circulation.

4. *Availability.* The draft EIS/EIR is currently scheduled to be available for public review and comment in 2016.

Dated: February 8, 2010.

Thomas Chapman,

COL, EN, Commanding.

[FR Doc. 2010–3493 Filed 2–22–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Proposed Duke Energy Carolinas, LLC, Offshore Wind Demonstration Project Within the Pamlico Sound, Dare County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Regulatory Division has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, from Duke Energy Carolinas, LLC, to construct up to three (3) power generating wind turbines within the Pamlico Sound and to conduct research relating to the development of future offshore wind energy projects. This project is located within a 3-mile square area located approximately 7.3 miles west of Avon and 9.1 miles north of Frisco within the Pamlico Sound, NC. In order to maximize exposure to prevailing winds, the turbines will be oriented in a northwest to southeast

configuration (NW corner: Lat. 35.23.9.78 N, Long. 75.39.26.32 W/SE corner: Lat. 35.22.4.26 N, Long. 75.38.20.80 W). Construction will require barge-supported equipment to install the foundations supporting the turbines, rock aprons may be installed to protect the base of each structure, and an approximately 6-inch diameter electric cable will be buried within the bottom of Pamlico Sound for connection to an existing, land-based substation near the communities of either Avon, Buxton, Frisco, or Hatteras, NC. Power generated by this project would be supplied to the electric grid on Hatteras Island. The University of North Carolina at Chapel Hill (UNC) will conduct research on the project to evaluate water user conflicts, ecological risks, engineering obstacles, and measures to mitigate the effects of the turbines on the public.

DATES: A public scoping meeting for the Draft Environmental Impact Statement (DEIS) will be held at the Dare County Justice Center, 962 Marshall C. Collins Drive, Manteo, NC, on Thursday, March 18, 2010, beginning at 6 p.m. EST. Written comments will be received until April 2, 2010.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division, ATTN: File Number SAW 2009–01880, Post Office Box 1000, Washington, NC 27889–1000.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS may be directed to the Regulatory Division, Mr. David Lekson, telephone (910) 251–4595; or Ms. Tracey Wheeler, telephone (910) 251–4627.

SUPPLEMENTARY INFORMATION: Duke Energy Carolinas, LLC, is an investor-owned utility that serves over 2 million customers within both North and South Carolina. Legislation was passed in NC to facilitate the development of this project and UNC completed a study on the feasibility of establishing wind turbines in NC's coastal waters, entitled *Coastal Wind, Energy for North Carolina's Future,* dated June 2009. The report includes a broad-scale analysis of environmental, engineering, and other issues that would likely affect wind energy development in NC's coastal waters. The analysis took into account potential conflicts with birds, bats, marine mammals, threatened and endangered species, fisheries, geology, aviation and military use, recreation, commercial fishing, cultural resources, visual resources, and other factors. These environmental considerations were combined with wind power, geology and foundation analyses, and an economic feasibility analysis to produce a map depicting areas that are most suitable for wind energy development and that hold promise for future study.

Duke Energy's stated purpose of the project is to construct and operate a demonstration wind energy facility in the coastal waters of North Carolina in order to evaluate the ecological risks, engineering obstacles, and potential mitigation measures associated with water-based wind energy development in North Carolina. If commercial-scale wind energy development is deemed to be feasible, this demonstration project will also provide research data that can be used in development of future wind power projects.

Proposed Impacts to Wetlands and Surface Waters: Issues to be addressed include, but are not limited to, potential adverse impacts to navigation, high quality tidal and non-tidal coastal wetlands, designated outstanding resource waters, endangered species, essential fish habitat, other fish and wildlife resources, military operations, commercial and recreational fishing interests, U.S. Coast Guard interests, tourism, aesthetics, and traditional and future public use of the Pamlico Sound.

Scope of Investigations: Based upon the proposed impacts to navigable waters of the United States, including wetlands, Duke Energy has been advised by the USACE that an Environmental Impact Statement (EIS) should be prepared for the proposed project. The scope of the EIS investigation will include the following: Alternatives analyses, Affected environment, Environmental consequences, Secondary and Cumulative Environmental Impacts, and Compensatory Mitigation.

Alternatives analyses: Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14(a)) require an environmental impact statement (EIS) to "rigorously explore and objectively evaluate all reasonable alternatives" for a proposed action. The regulations (40 CFR 1502.14(b)) further require that substantial treatment be made of each alternative considered in detail, including the proposed action. The proposed project and a reasonable number of alternatives, including the no action alternative and constructing the wind turbines and ancillary facilities in other areas within and outside of eastern NC, will be evaluated and compared in the EIS. The factors used to compare the alternatives will be the same for each of the alternatives.

Affected environment: CEQ regulations (40 CFR 1502.15) require the EIS to describe the environment of the areas to be affected or created by the alternatives under consideration. The data and analysis shall be commensurate with the importance of the impact. Based upon preliminary evaluation of the proposed project, it appears the primary areas of environmental concern will focus on navigable waters, benthic and water-column estuarine resources, coastal wetlands and other aquatic resource functions and values including mitigation of such losses.

Environmental consequences: CEQ regulations (40 CFR 1502.16) state the EIS will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The EIS will identify and disclose the direct impacts of the proposed project and study a reasonable number of alternatives.

Secondary and cumulative environmental impacts: Cumulative impacts result from the incremental impact of the proposed action when added to past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes the action. Geographic information system data and mapping will be used to evaluate and quantify secondary and cumulative impacts of the proposed project with particular emphasis given to navigable waters, benthic and water-column estuarine resources, and wetlands.

Mitigation: CEQ regulations (40 CFR 1502.14, 1502.16, and 1508.20) require the EIS to include appropriate mitigation measures. The USACE has adopted, through the CEQ, a mitigation policy which embraces the concepts of "no net loss of wetlands" and project sequencing. The purpose of this policy is to restore and maintain the chemical, biological, and physical integrity of "Waters of the United States," specifically wetlands. Mitigation of wetland impacts has been defined by the CEQ to include: avoidance of impacts (to wetlands), minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts (40 CFR 1508.20). Each of these aspects (avoidance, minimization, and compensatory mitigation) must be considered in sequential order. As part of the EIS, the applicant will develop a

compensatory mitigation plan detailing the methodology and approach to compensate for unavoidable impacts to waters of the United States, including wetlands.

Based on the size, complexity, and potential impacts of the proposed project, Duke Energy has been advised by the USACE to identify and disclose the environmental impacts of the proposed project in an Environmental Impact Statement (EIS). Within the EIS, the Applicant will conduct a thorough environmental review, including an evaluation of a reasonable number of alternatives. After distribution and review of the Draft EIS and Final EIS, the Applicant understands that the USACE will issue a Record of Decision (ROD) for the project. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by Federal and State agencies.

Jefferson M. Ryscavage,

Colonel, EN, Commanding.

[FR Doc. 2010–3494 Filed 2–22–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Monday, March 30th, 2010, from 11 a.m. to 12 p.m. The meeting will be a conference call meeting and the conference number is 334–953–1945. The purpose and agenda of this meeting is to provide independent advice and recommendations on matters pertaining to the proposal of a Ph.D. degree at Air University. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Dr. Dorothy Reed, Federal Designated Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159 or Mrs. Diana Bunch, Alternate Federal Designated Officer, same address, telephone (334) 953–4547.

Bao-Anh Trinh,

YA–3, Air Force Federal Register Liaison Officer.

[FR Doc. 2010–3504 Filed 2–22–10; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Monday, April 19th, 2010, from 8 a.m.–5 p.m., and Tuesday, April 20th, 2010, from 8 a.m.–8 p.m. The meeting will be held in the Air University Commander's Conference Room located in building 836. Please contact Dr. Dorothy Reed, 334–953–5159 for further details of the meeting location.

The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Dr. Dorothy Reed, Federal Designated Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159 or Mrs. Diana Bunch, Alternate Federal Designated Officer, same address, telephone (334) 953–4547.

Bao-Anh Trinh,

YA–3, Air Force Federal Register Liaison Officer.

[FR Doc. 2010–3502 Filed 2–22–10; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 26, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 18, 2010.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Private School Universe Survey (PSS) 2010–13.

Frequency: Biennially.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 15,867.
Burden Hours: 3,186.

Abstract: Since 1989, the Private School Universe Survey (PSS) provides biennially an accurate and complete list of all private schools in the U.S., along with a variety of related data, including: Religious orientation; grade-levels taught and size of school; length of school year and of school day; total student enrollment by gender (K–12); number of high school graduates; whether a school is single-sexed or coeducational; number of teachers employed; program emphasis; and existence and type of its kindergarten program. PSS includes all schools that are not supported primarily by public funds, provide classroom instruction for one or more of grades K–12 or comparable ungraded levels, and have one or more teachers. No substantive changes have been made to the survey or its procedures since its last approved administration.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4230. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–3506 Filed 2–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 4, 2010, 9 a.m.–5 p.m.

ADDRESSES: Shilo Inn, 50 Comstock, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA, 99352; Phone: (509) 376–2048; or E-mail: *Paula_K_Call@rl.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Discussion and potential advice on Draft Tank Closure and Waste Management Environmental Impact Statement.
- Board Business.

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Paula Call's office at

the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on February 18, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–3480 Filed 2–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford (known locally as the Hanford Advisory Board [HAB]), River and Plateau, Tank Waste, Public Involvement, Health Safety and Environmental Protection and Budgets and Contracts Subcommittees. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 3, 2010, 8:30 a.m.–12 p.m.

ADDRESSES: Shilo Inn, 50 Comstock, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA, 99352; Phone: (509) 376–2048; or E-mail: *Paula_K_Call@rl.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting topic will be the discussion of DOE's draft Long-Term Stewardship Plan for the Hanford site.

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its subcommittee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Paula Call's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on February 18, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–3483 Filed 2–22–10; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–50–000]

Petal Gas Storage, L.L.C.; Notice of Application

February 12, 2010.

Take notice that on January 29, 2010, Petal Gas Storage, L.L.C. (Petal), 1100 Louisiana Street, Houston, Texas, 77002, filed with the Federal Energy Regulatory Commission an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations for authorization to convert an existing salt-brine production cavern, referred to as Cavern No. 12A, to natural gas storage and to connect the converted cavern to its existing natural gas storage facilities with approximately 1,525 feet of 16-inch-diameter natural gas pipeline. All of the proposed facilities are located east of Hattiesburg, Mississippi, in Forrest County, within Petal's existing natural gas storage complex. The project would increase Petal's total storage capacity by approximately 8.2 Bcf consisting of 5.0 Bcf of working gas and 3.2 Bcf of cushion gas all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application should be directed to Patricia A. Totten, Vice President and Regulatory Counsel, Petal Gas Storage, L.L.C., 1100 Louisiana Street, Houston, Texas 77002, (713) 381–3939, (713) 803–1307 (fax), or via e-mail at *patotten@eprod.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–3459 Filed 2–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–426–001]

Stetson Wind II, LLC; Notice of Filing

February 12, 2010.

Take notice that, on February 5, 2010, Stetson Wind II, LLC filed to amend, its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 19, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–3460 Filed 2–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–636–000]

Centre Lane Trading Ltd.; Rate Filing Includes Request for Blanket Section 204 Authorization

February 12, 2010.

This is a supplemental notice in the above-referenced proceeding of Centre Lane Trading Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–3458 Filed 2–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–48–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

February 16, 2010.

Take notice that on January 29, 2010, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP10–48–000, a prior notice request pursuant to sections 157.205, 157.210, and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to replace a two mile section of the 12-inch diameter XT pipeline by constructing approximately two miles of 20-inch diameter pipeline, located in Johnson County, Missouri, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Southern Star proposes to replace two miles of 12-inch diameter XT pipeline with two miles of 20-inch diameter XM pipeline as a continuation of its multi-year plan initiated in 2008 to replace the remaining miles of 12-inch diameter XT pipeline. Southern Star estimates the cost of construction to be $4,961,000, for which internally generated funds will be used. Southern Star asserts that after the proposed construction is completed, approximately two miles of the 12-inch diameter XT pipeline will be abandoned either in place or by removal at landowners' discretion. Southern Star states that the replacement pipeline will improve reliability and offer flexibility on its system, but does not provide any additional firm capacity upstream and will continue to be operated at its current Maximum Allowable Operating Pressure (MAOP) of 570 psi.

Any questions regarding the application should be directed to David N. Roberts, Manager, Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 56, Owensboro, Kentucky 42301, or call (270) 852–4654.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–3461 Filed 2–22–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9115–5; Docket ID No. EPA–HQ–ORD–2009–0816]

A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: EPA is announcing an extension of the original 30-day public comment period for the draft document titled, "A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change" (EPA/600/R–09/011). This extension is being granted in response to request from interested parties. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. This draft document describes an evaluative framework that may be used to categorize the relative vulnerability of species to climate change. To illustrate the use of this framework, it was applied to six U.S. threatened and endangered species: the golden-cheeked warbler, the salt marsh harvest mouse, the Mount Graham red squirrel, the Lahontan cutthroat trout, the desert tortoise and the bald eagle.

An external peer review of this report has been completed. The public comment period and the external peer review are separate processes. The public comment period provides an opportunity for all interested parties to comment on the document. When finalizing the draft document, EPA will consider any public comments received in accordance with this notice.

EPA released this draft document solely for the purpose of pre-dissemination review and comment under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The original 30-day public comment period began on November 25, 2009 and closed on December 28, 2009. All comments received to date will be considered, including those received after the close of the original public comment period. An additional 30-day comment period begins on February 23, 2010, and ends March 25, 2010. Comments should be in writing and must be received by EPA by March 25, 2010.

ADDRESSES: The draft "A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, "A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change."

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions

provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information and all other questions, contact Susan Julius, NCEA; telephone: 703–347–8619; facsimile: 703–347–8694; or e-mail: *julius.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/ Document

The document, "A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change" describes an evaluative framework that may be used to categorize the relative vulnerability of species to climate change. Four modules compose this framework: Module 1 categorizes baseline vulnerability to extinction or major population reduction by scoring those elements of the species' life history, demographics, and conservation status that influence the likelihood of its survival or extinction (excluding climatic changes); Module 2 scores the likely vulnerability of a species to future climate change, including the species' potential physiological, behavioral, demographic, and ecological responses to climate change; Module 3 combines the results of Modules 1 and 2 into a matrix to produce an overall score of the species' vulnerability to climate change, which maps to an adjectival category, such as "critically vulnerable," "highly vulnerable," "less vulnerable," and "least vulnerable;" Module 4 is a qualitative determination of uncertainty of overall vulnerability (high, medium, and low) based on evaluations of uncertainty done in each of the first 3 modules.

To illustrate the use of this framework, it was applied to six U.S. threatened and endangered species. Based on the framework, four of those species were categorized as "critically vulnerable:" the golden-cheeked warbler (*Dendroica chrysoparia*), the salt marsh harvest mouse (*Reithrodontomys raviventris*), the Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*), and the Lahontan cutthroat trout (*Oncorhyncus clarki henshawi*). The desert tortoise (*Gopherus agassizii*) was characterized as "highly vulnerable" and the bald eagle (*Haliaeetus leucocephalus*) was categorized as "less vulnerable." Certainty scores in Module 4 ranged between medium and high and reflect the amount and quality of information available.

This framework was developed by EPA's Global Change Research Program and is offered as one of a number of potential approaches for prioritizing those species most vulnerable to climate change. It is not intended to serve as a tool for determining whether a species is endangered or threatened under the Section 4 listing process of the Endangered Species Act.

EPA's Global Change Research is an assessment-oriented program committed to developing frameworks and tools to assist decision-makers in evaluating the impacts of climate change to air quality, water quality and ecosystems.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2009–0816, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0816. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: February 1, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–3516 Filed 2–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2002–0059; FRL–9115–4; EPA ICR No. 1803.06, OMB Control No. 2040–0185]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Drinking Water State Revolving Fund Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 25, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2002–0059 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *OW–Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Howard E. Rubin, Mail Code 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2051; fax number: (202) 564–3757; e-mail address: *Rubin.HowardE@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Monday, October 26, 2009 (74 FR 54996), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2002–0059, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Drinking Water State Revolving Fund Program (Renewal).

ICR numbers: EPA ICR No. 1803.06, OMB Control No. 2040–0185.

ICR Status: This ICR is currently scheduled to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104–182) authorized the creation of the Drinking Water State Revolving Fund (DWSRF; the Fund) program in each State and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of the EPA to award capitalization grants to the States and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems. States can also reserve a portion of their grants to conduct various set-aside activities. The information collection activities will occur primarily at the program level through the (1) Capitalization Grant Application and Agreement/State Intended Use Plan; (2) Biennial Report; (3) Annual Audit; and (4) Assistance Application Review. Information collected is needed for input into the DWSRF National Information Management System and the Project & Benefits Reporting System.

(1) *Capitalization Grant Application and Agreement/State Intended Use Plan:* The State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use all the funds covered by the capitalization grant. The State may, as an alternative, develop the IUP in a two part process with one part identifying the distribution and uses of the funds among the various set-asides in the DWSRF program and the other part dealing with project assistance from the Fund.

(2) *Biennial Report:* The State must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The scope of the report must cover assistance provided by the Fund and all other set-aside activities included under the Capital Grant Agreement. States which jointly administer DWSRF and Clean Water State Revolving Fund (CWSRF) programs, in accordance with section 1452(g)(1), may submit reports (according to the schedule specified for each program) that cover both programs.

(3) *Annual Audit:* A State must comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest and EPA recommends that a State conduct an annual independent audit of its DWSRF program. The scope of the report must cover the DWSRF Fund and all other set-aside activities included in the Capitalization Grant Agreement. States which jointly administer DWSRF and CWSRF programs, in accordance with section 1452(g)(1), may submit audits that cover both programs but which report financial information for each program separately.

(4) *Assistance Application Review:* Local applicants seeking financial

assistance must prepare and submit DWSRF loan applications. States then review completed loan applications and verify that proposed projects will comply with applicable Federal and State requirements.

As a result of the American Recovery and Reinvestment Act signed by the President on February 17, 2009, the Drinking Water State Revolving Fund received an additional $2 billion in funding for assistance agreements for projects to be under contract or construction by February 17, 2010. EPA expects an estimated two-fold increase of respondents (in some years) due to this additional funding.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 2,410 hours per State and 80 hours per local respondent (including Indian Tribes and Alaska Native Villages) annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimate total number of potential respondents: 1,887 per year.

Frequency of response: Annual (for Capitalization Grants and Audits), On Occasion (for Biennial reports and Loan Applications).

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours per response: 134.

Estimated total annual burden hours: 269,797.

Estimated total annual costs: $10,639,932, which includes $0 capital/operation & maintenance cost.

Changes in the Estimates: There is an increase of 72,927 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This reflects EPA's calculation of the burden hours resulting from a possible two-fold increase in local respondents and ongoing programmatic implementation needs due to additional funds from the American Reinvestment and Recovery Act of 2009.

Dated: February 16, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–3519 Filed 2–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9114–1]

California State Nonroad Engine Pollution Control Standards; California New Nonroad Compression Ignition Engines; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision Granting Authorization of California's New Nonroad Compression Ignition Engine Emission Standards

SUMMARY: The Environmental Protection Agency (EPA) today, pursuant to section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(e), is granting California its request for an authorization of its emission standards and accompanying test procedures for new nonroad compression ignition (CI) engines. EPA is also confirming that one sub-set of California's amended regulations does fall within-the-scope of an authorization that EPA previously granted.

ADDRESSES: Materials relevant to this decision are contained in Docket No. EPA–HQ–OAR–2008–0670. The docket is located at The Air Docket, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material.

Additionally, an electronic version of the public docket is available through the Federal Government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2008–0670 in "Search Documents" to view documents in the record of CARB's nonroad compression ignition authorization request. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Compliance and Innovative Strategies Division, United States Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9949. E-mail Address: *knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By this decision, issued pursuant to section 209(e) of the Clean Air Act (the "Act"), 42 U.S.C. 7543(e), the Environmental Protection Agency ("EPA") has determined that the California Air Resources Board's ("CARB's") regulations and amendments regarding new nonroad compression ignition ("CI") engine emission standards and testing procedures, that were adopted in 2000 and 2004–05, warrant EPA's authorization. CARB's regulations and amendments meet the criteria for such an authorization as outlined in section 209(e)(2) of the Act. CARB has requested that EPA find that its nonroad CI regulations and amendments fall within-the-scope of previously granted authorizations or, in the alternative, that EPA adopt and apply a new "harmonization construct" when California's emission standards harmonize with federal emission standards. CARB's regulations and amendments affect three power categories of nonroad CI engines as expressed in kilowatts (kW): those less than 19 kW, those greater than 19 kW but less than 130 kW, and those greater than 130 kW. EPA has previously granted authorizations for California's Small Off-Road Engine less than 19 kW ("SORE") regulations.[1] Subsequently, EPA confirmed that CARB's SORE amendments were within-the-scope of that prior authorization.[2] EPA also previously granted an authorization for California's new heavy-duty off-road diesel-cycle engines greater than 130 kW.[3] EPA subsequently confirmed that a later CARB amendment to those standards was within-the-scope of that prior authorization.[4] To summarize, the smallest and largest categories of engines at issue here are the subjects of prior EPA authorizations and within-the-scope determinations, while the middle category of engines presents an entirely new size category for EPA to consider.

[1] 60 FR 37440 (July 20, 1995).

[2] 68 FR 69763 (November 20, 2000).

[3] 60 FR 48981 (September 21, 1995).

[4] 69 FR 38958 (June 29, 2004).

In a letter dated July 18, 2008,[5] CARB requested that EPA confirm that its amendments to the regulations affecting the three nonroad CI engine categories fall within-the-scope of the previously granted authorizations for the less than 19 kW and greater than 130 kW categories. CARB's amendments to the smallest category of engines (those less than 19kW) that were completed as part of its 2000 Rulemaking, did not raise the stringency of those standards and EPA is confirming today that they are within-the-scope of its previous authorization. However, EPA has also found that this authorization request raises new issues with respect to each category that requires EPA to conduct a full authorization inquiry. For the smallest category, while CARB's amendments affecting this category in the 2000 Rulemaking are within-the-scope, increases to those standards' stringency in the 2004–05 Rulemaking raise new issues. For the middle category of nonroad CI engines (those engines between 19 kW and 130 kW), those standards present new issues for EPA's consideration because CARB's 2000 Rulemaking created the category and the 2004–05 Rulemaking increased their stringency. For the largest category of engines, new issues are presented due to increases in stringency as a result of both the 2000 and 2004–05 Rulemakings. These new issues warrant a full EPA authorization evaluation for all three categories. Upon completion of that evaluation, EPA is authorizing CARB to enforce these standards and procedures.

II. Background

A. Clean Air Act Nonroad Engine Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce its own standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[6]

As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[7]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state standards are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

B. California's Authorization Request

In its July 18, 2008 letter to EPA, CARB notified EPA of additional regulations and amendments to its nonroad CI emissions program and asked EPA to confirm that these regulations and amendments are within-the-scope of previous authorizations. EPA can make such a confirmation if certain conditions are present. Specifically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered as falling within-the-scope of a previously granted authorization provided that it: (1) Does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable Federal standards, (2) does not affect consistency with section 209 of the Act, and (3) raises no new issues affecting EPA's previous authorization.[8]

California's request, as noted above, concerns its emissions program for nonroad CI engines which are inclusively categorized by three engine power classes. Since EPA's previous authorizations regarding California's nonroad CI program, California has amended its standards for two of the classes and established and amended standards for the third class. These new standards and the amendments for each class were adopted over the course of two distinct CARB rulemakings: one in 2000 (hereinafter the "2000 Rulemaking") and another in 2004–05 (hereinafter the "2004–05 Rulemaking"). The 2000 Rulemaking adopted by CARB generally harmonized California's emission standards and test procedures to the federal standards for the same nonroad CI engines that were promulgated in 1998 (Tier 1 through Tier 3). Similarly, the 2004–05 Rulemaking generally harmonized California's Tier 4 standards to the federal Tier 4 standards for these same nonroad CI engines that EPA adopted in 2004. All of CARB's standards for nonroad CI engines appear in Title 13 of the California Code of Regulations (CCR) sections 2420–2427. The federal emission standards for nonroad CI engines appear in 40 CFR parts 89 and 1039.

The first category of engines includes nonroad CI engines under 19 kW. The 2000 Rulemaking merely re-codified California's previously promulgated standards for this engine category, which EPA had previously found to be within-the-scope of its SORE authorization.[9] These standards were later amended in the 2004–05 Rulemaking to increase the stringency for this category of engines by promulgating Tier 4 standards, starting in the 2008 model year. These numerical standards are identical to current Federal standards: California's Tiers 1, 2, and 4 align to EPA's Tiers 1, 2, and 4.

The second category of engines includes those nonroad CI engines greater than 19 kW but less than 130 kW. This category of standards was first established by the 2000 Rulemaking and was subsequently amended in the

[5] EPA–HQ–OAR–2008–0670–0002. CARB originally requested a within-the-scope authorization for its off-road CI engine regulations that it had adopted in 2000, on July 16, 2004. CARB has since asked that its July 18, 2008 request replace that previous request and that EPA consider the 2000 regulations and amendments together with the 2004–05 regulations and amendments as one within-the-scope authorization request.

[6] 59 FR 36969 (July 20, 1994). These regulations were subsequently moved to 40 CFR part 1074 and modified slightly. *See* 73 FR 59379 (October 8, 2008).

[7] *See* 59 FR 36969 (July 20, 1994).

[8] Decision Document accompanying waiver determination announced in 51 FR 12391 (April 10, 1986).

[9] 65 FR 69767 (November 20, 2000).

2004–05 Rulemaking. The standards began with model year 2000, requiring the engines to meet Tier 1 standards; Tier 2 standards are required for model years 2003 and 2004; and Tier 3 standards are required for model years 2007 and 2008. All of these standards for this engine size category are numerically identical to federal standards, with California's Tiers 1 through 3 matching EPA's Tiers 1 through 3.[10] Finally, California's Tier 4 standards are required of all model year engines including and later than the 2009 model year. California's Tier 4 standards largely align to EPA's Tier 4 standards for this category with the slight difference that California maintains separate NMHC and NO_X standards while for some engines EPA has a combined NMHC+NO_X standard.

The third category of engines includes those nonroad CI engines greater than 130 kW. This category of standards was amended, including increases in numerical stringency, in both the 2000 Rulemaking and 2004–05 Rulemaking. As with the above-described categories, the standards for this category align with federal standards: Tier 2 standards are required for model years 2001–2006, Tier 3 standards are required for model year 2006–2010, and Tier 4 standards are required for model years beginning with and beyond 2011. All tiers of California standards numerically match the corresponding federal standards for the same engine size.[11]

At the heart of both CARB's 2000 and 2004–05 Rulemakings were adoption of the above-noted emission standards. In each proceeding, though, additional amendments to California's regulations were made, largely to harmonize with Federal compliance and enforcement procedures. In its 2000 Rulemaking, CARB adopted requirements mirroring federal requirements for maintenance intervals, recordkeeping, warranties, test procedures, certification test fuel, and engine useful life.[12] At that time, CARB also provided for implementation flexibility for post-manufacture marinizers and optional reduced-emission standard labeling requirements for "Blue Sky Series" CI engines. In its 2004–05 Rulemaking, CARB, in addition to its adoption of emission standards, continued to harmonize its compliance and enforcement procedures to the corresponding federal compliance and enforcement procedures. Specifically, CARB adopted federal modifications that EPA had adopted in our Final Rule for Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel and EPA's Final Rule for Test Procedures for Testing Highway and Nonroad Engines Omnibus Technical Amendments.[13] CARB adopted federal procedures for not-to-exceed limits, incentives for early introduction of engines with advanced after-treatment, new test procedures and test cycles, and enhanced in-use compliance provisions and flexibilities. California's 2004–05 Rulemaking does include some additional requirements "that are intended to provide additional safeguards for a more identifiable and enforceable deployment of flexibility allowances in California."[14] Those supplemental requirements include additional labeling content requirements beyond that required by the federal program, a required CARB Executive Order for engines certified under the transitional flexibility program, and the maintenance of California's own in-use warranty/recall program.

C. EPA's Consideration of CARB's Request

Because EPA believed it possible that CARB's amendments did in fact raise "new issues" as they impose new standards for the category of nonroad CI engines between 19 kW and 130 kW and raise the stringency of standards for the smaller and larger categories of nonroad CI engines, EPA offered the opportunity for a public hearing and requested public comments on these new standards and testing procedures.[15] EPA received no request for a public hearing, nor was any comment received on the CARB standards and procedures at issue. Therefore, EPA has made this determination based on the information submitted by CARB in its request.

D. Standard and Burden of Proof in Clean Air Act Section 209 Proceedings

In *Motor and Equip. Mfrs. Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (hereinafter "*MEMA I*"), the United States Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> [C]onsider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial * * * have shown that the factual circumstances exist in which Congress intended a denial * * *.[16]

The court in *MEMA I* considered the standards of proof pursuant to section 209 for the two findings necessary to grant a waiver for an "enforcement procedure" (as opposed to the standards themselves): (1) "Protectiveness in the aggregate" and (2) "consistency with section 202(a)" findings. The court instructed that, "the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision."[17]

The court upheld the Administrator's position that, to deny a waiver, "there must be 'clear and compelling evidence' to show that proposed procedures undermine the protectiveness of California's standards."[18] The court noted that this standard of proof "also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare."[19]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all section 209 proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the section 209 standards of proof concerning an authorization request for nonroad emission standards and testing procedures, there is nothing in the opinion that suggests the court's analysis would not apply with equal force in such determinations. EPA's past section 209 decisions have consistently made clear that:

> [E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of "compelling and extraordinary" conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one."[20]

Furthermore, Congress intended that EPA's review of California's decision-making be narrow in scope.[21] This has

[10] *Id.*

[11] *Id.*

[12] *See* CARB's Request at 10; EPA–HQ–OAR–2008–0670–0002; *see also* CARB's Exhibit 4, EPA–HQ–OAR–2008–0670–0012 and EPA–HQ–OAR–2008–0670–0013, and CARB's Exhibit 5, EPA–HQ–OAR–2008–0670–0014.

[13] 69 FR 38958 (June 29, 2004), 70 FR 40421 (July 13, 2005).

[14] *See* CARB's Request at 14, EPA–HQ–OAR–2008–0670–0002; *see also* CARB Exhibit 12, EPA–HQ–OAR–2008–0670–0023, and CARB Exhibit 13, EPA–HQ–OAR–2008–0670–0025.

[15] 73 FR 58583 (October 7, 2008).

[16] *Motor and Equip. Mfrs. Assoc.* v. *EPA* (MEMA I), 627 F.2d 1095, 1122 (D.C. Cir. 1979).

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See, e.g.,* 40 FR 23, 102–103 (May 28, 1975).

[21] *See, e.g.,* MEMA I, 627 F.2d at 1110–11, *citing* H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977).

led EPA in the past to reject arguments that are not specified within the statute as grounds for denying a waiver or authorization:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[22]

Thus, EPA's consideration of all the evidence submitted concerning this authorization decision is circumscribed by its relevance to those questions which the Administrator is directed to consider by section 209.

Finally, opponents of the waiver bear the burden of showing whether California's waiver request is inconsistent with section 202(a). As found in *MEMA I,* this obligation rests firmly with opponents in a section 209 proceeding; the court held that:

> The language of the statute and its legislative history indicate that California's regulations, and California's determinations that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing, and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[23]

The Administrator's burden, on the other hand, is to determine that she has made a reasonable and fair evaluation of the information in the record when coming to the waiver decision. As the court in *MEMA I* stated, "[h]ere, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if [s]he seeks to overcome that evidence with unsupported assertions of [her] own, [s]he runs the risk of having [her] waiver decision set aside as arbitrary and capricious." [24] Therefore, the Administrator's burden is to act "reasonably." [25]

[22] 36 FR 17458 (August 31, 1971). Note that the "more stringent" standard expressed here in 1971, was superseded by the 1977 amendments to section 209, which established that California's standards must be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

[23] MEMA I at 1121.

[24] *Id.* at 1126.

[25] *Id.*

III. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that CARB was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. CARB's Board made a protectiveness determination in Resolution 00–3, dated January 27, 2000, finding that sections 2111, 2112, 2137, 2139, 2140, 2141, 2400, 2401, 2403, 2420–27 and Appendix A to article 2.1, chapter 2, division 3 of Title 13, California Code of Regulations, as amended, (the 2000 Rulemaking) will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards.[26] A similar protectiveness determination was made in Resolution 04–43, dated October 21, 2005, with regard to amended sections 2420–2427 and new section 2425.1 and the three amended test procedures incorporated by reference therein to Title 13 of the California Code of Regulations (the 2004–5 Rulemaking).[27] CARB's protectiveness determinations in both rulemakings were, therefore, based on comparisons to the Federal standards which demonstrate that CARB's standards and test procedures align with the Federal program.

In addition, EPA did not receive any comments stating that CARB's nonroad CI requirements are not, in the aggregate, as stringent as applicable Federal standards.

Therefore, based on the record before me, I cannot find that CARB's nonroad CI regulations and amendments, as noted, would cause the California nonroad emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards.

[26] "*Be It Further Resolved* that the Board hereby determines that the regulations adopted herein will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards." CARB Resolution 00–3 at 6 (January 27, 2000), CARB's Exhibit 2, EPA–HQ–OAR–2008–0004.

[27] "*Be It Further Resolved* that the Board hereby determines that the regulations approved herein will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards." CARB Resolution 04–43 at 6 (October 21, 2005), CARB's Exhibit 9, EPA–HQ–OAR–2008–0670–0021.

B. Need for California Standards To Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California "does not need such California standards to meet compelling and extraordinary conditions * * *." This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[28] As to the need for the particular standards that are the subject of this decision, California is entrusted with the power to select "the best means to protect the health of its citizens and the public welfare." [29] CARB has repeatedly demonstrated the existence of compelling and extraordinary conditions in California.[30]

EPA has not received any adverse comments to suggest that California no longer suffers from serious and unique air pollution problems. In its authorization request letter, CARB concluded that "there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own nonroad vehicle and engine emissions control program." [31] EPA has repeatedly declined to find fault in California's demonstrations of "compelling and extraordinary conditions" when waiving preemption for motor vehicle emission standards and authorizing nonroad emission standards.[32] Moreover, because EPA has

[28] See 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[29] H.R. Rep. No. 95–294, 95th Cong., 1st Sess., 301–02 (1977)(cited in *MEMA I,* 627 F.2d at 1110).

[30] CARB expressed its needs for its own emission control program in both of the rulemakings at issue here. ("*Be It Further Resolved* that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions." CARB Resolution 00–3 at 6 (January 27, 2000), CARB's Exhibit 2; CARB Resolution 04–43 at 6 (October 21, 2005), CARB's Exhibit 9, EPA–HQ–OAR–2008–0670–0021.)

[31] CARB's Request Letter at 32, EPA–HQ–OAR–2008–0670–0002.

[32] *See, e.g.,* 74 FR 3030, 3033 (January 16, 2009); "California State Nonroad Engine and Vehicle Pollution Control Standards; Decision of the Administrator (Authorization of In-Use Emission Standards for Transport Refrigeration Unit Engines)," EPA–HQ–OAR–2005–0123–0049, at 19, *available at http://www.regulations.gov/search/Regs/home.html#documentDetail?R=090000648082352c* ("EPA has agreed with CARB, in earlier nonroad engine standards requests, that California's continuing extraordinary conditions justify separate California programs."); 71 FR 75536 (December 15, 2006).

not received adverse public comment challenging California's need for its own mobile source pollution control program or asserting any change from California's previous demonstrations, I cannot deny the authorization based on a lack of compelling and extraordinary conditions.

C. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As delineated above in Section II.A., EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C). First, California's nonroad CI engine emission standards are consistent with section 209(a) because they do not apply to new motor vehicles or engines. Second, California's nonroad CI engine emission standards are consistent with section 209(e)(1) because they do not affect new farming or construction vehicles or their engines below 175 hp, or new locomotives or their engines.[33] Third, the requirement that California's standards be consistent with section 209(b)(1)(C) of the Act effectively requires consistency with section 202(a) of the Act.

California standards are inconsistent with section 202(a) of the Act if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if the Federal and California test procedures were not consistent.

The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the Federal test procedure.[34] EPA did not receive any comments suggesting that CARB's standards are inconsistent with section 202(a); therefore, I cannot deny California's authorization based on the standard of review for consistency with section 209.

1. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[35] Section 202(a)(2) states, in part, that any regulation promulgated under its authority "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[36]

For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead time to implement that technology.[37] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[38]

As CARB notes, all three categories of the nonroad CI regulations have been written to align and harmonize California standards with Federal standards and testing procedures. Notably, because California's standards align to Federal standards, these are the same numerical standards that EPA, in the course of its own rulemaking under Clean Air Act authority, has already determined to be technologically feasible.

EPA did not receive any comments suggesting that CARB's standards and testing procedures are technologically infeasible. Consequently, based on the record before me, I cannot deny California's authorization based on technological infeasibility.

2. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the Federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and Federal testing requirements using the same test vehicle or engine.[39]

CARB makes clear that its nonroad CI certification procedures, for all three power categories, align with Federal certification procedures so that a manufacturer can use the same test engine to certify for both emissions programs.

EPA received no comments suggesting that CARB's nonroad CI requirements pose a testing procedure consistency problem. Therefore, based on the record before me, I cannot find that CARB's testing procedures are inconsistent with section 202(a). I cannot, then, deny CARB's request based on this criterion.

D. Within-the-Scope Authorizations

CARB suggests in its request letter that since the new requirements for two of the categories are amendments to previously authorized California standards and that all three categories of regulations align California requirements to Federal requirements, this request should be found as within-the-scope of previous EPA authorizations. Typically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered within-the-scope of a previously granted authorization provided that it: (1) Does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards, (2) does not affect consistency with section 209 of the Act, and (3) raises no new issues affecting EPA's previous authorization.[40]

Only one sub-set of the standards for which CARB requests a within-the-scope confirmation meets EPA's above-noted third criterion for within-the-scope confirmation. Because the smallest category of nonroad CI engines were merely re-codified as a result of

[33] *See* CARB's "Staff Report: Initial Statement of Reasons for Rulemaking," for a general list of off-road diesel engines that are excepted from this regulation (page 25) as well as a specific list of preempted applications (Appendix A at page 104). CARB's Exhibit 11, EPA–HQ–OAR–2008–0670–0028.

[34] MEMA I, 627, F.2d at 1126.

[35] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[36] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[37] 41 FR 44209 (October 7, 1976).

[38] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[39] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[40] *See, e.g.,* 51 FR 12391 (April 10, 1986) and 65 FR 69673, 69674 (November 20, 2000). The first within-the-scope determination stated that a CARB request made subsequent to an EPA waiver, "exists within the meaning and intent of the waiver granted." 37 FR 14831 (July 25, 1972).

the 2000 Rulemaking, that sub-set of standards from the 2000 rulemaking does meet the third criterion for a within-the-scope confirmation. Indeed, the mere re-codification of previously authorized standards that does not increase numerical stringency does not raise any new issues that affect EPA's prior authorization.

Even though the first two within-the-scope criteria have already been established above for all three engine categories, the third criterion prevents EPA from considering this entire request as within-the-scope of EPA's prior authorizations. First, since the middle category of engines has not been previously authorized, it very clearly presents a "new issue" that has not previously been subject to an authorization request.[41] Additionally, CARB increased the stringency of its own standards for the smallest category of nonroad CI engines in its 2004–05 Rulemaking and for the largest category of nonroad CI engines in both its 2000 and 2004–05 Rulemakings. EPA has stated in prior waiver and authorization determinations that increases in numerical stringency of standards are "new issues" for which a full waiver or authorization is required.[42] EPA, therefore, believes it appropriate to go beyond an examination of whether the new requirements affect the prior consistency with section 202(a) finding and, in this context, requires a new analysis of whether the new requirements standing on their own are consistent with section 209. As detailed already, above in Section III, EPA finds that CARB has demonstrated that it meets the requirements for a full section 209(e) authorization for all three categories of nonroad CI engines. EPA, therefore, believes a full authorization is appropriate for the new middle category of standards and the more stringent standards for the smallest and largest categories.[43]

As an alternative to the within-the-scope confirmation, California proposes that EPA adopt and apply a new "harmonization construct," under which EPA would limit its review of California's standards and presumptively authorize California to enforce more stringent California standards if those standards align with—but do not surpass—EPA's Federal emission standards. Although EPA has considered CARB's proposed harmonization construct, we did not receive any comment on this authorization request, which leaves us with no public input on the appropriateness of adopting such a construct. Lacking public input on this authorization request, the Agency does not believe it appropriate to adopt such a construct at this time, without further consideration. While EPA is not adopting this proposed construct at this time, we may consider and apply it in future waivers if appropriate.

IV. Decision

EPA's analysis finds that the criteria for granting a full authorization have been met for these regulations and amendments. All three engine categories require a full authorization because "new issues" are presented by new or more stringent standards in each category. For the smallest category of engines (those less than 19kW), numerical emission standards were raised in CARB's 2004–05 Rulemaking. These standards require and have met the criteria for a full authorization. CARB's amendments to this category's standards in its 2000 Rulemaking did not increase the standards' stringency and, thus, EPA can confirm that those standards fall within-the-scope of EPA's previous authorization for those standards. CARB is newly regulating the middle category of engines (those between 19 kW and 130 kW). EPA determined that this entire category presents new issues for which it must conduct a full authorization evaluation. Upon application of that evaluation, EPA has determined that CARB has met the requirements for a full authorization. For the largest category of engines (those greater than 130 kW), CARB has raised emission standards in both of its rulemakings. The increased stringency raised new issues for EPA to consider and required EPA to apply a full authorization analysis. Upon evaluation, EPA has determined that CARB has met the criteria for a full authorization for these standards.

The Administrator has delegated the authority to grant California a section 209(e) authorization to enforce its own emission standards for nonroad engines to the Assistant Administrator for Air and Radiation. Having given consideration to all the material submitted for this record, and other relevant information, I find that I cannot make the determinations required for a denial of an authorization pursuant to section 209(e) of the Act. Therefore, I grant authorization to the State of California with respect to its new nonroad CI engine requirements as set forth above.

My decision will affect not only persons in California but also manufacturers outside the State who must comply with California's requirements in order to produce engines for sale in California. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act.

Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 26, 2010. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: February 5, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

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BILLING CODE 6560–50–P

[41] *See* 50 FR 20126 at 20127 (May 14, 1985)("[B]y extending California's standards and test procedures to vehicles not previously covered, these amendments do raise significant new issues not considered in prior waiver decisions.")

[42] *See, e.g.,* 71 FR 44027 at 44028 (August 3, 2006)("EPA believed it possible that CARB's amendments do in fact raise "new issues" as they impose new more stringent standards * * *") and 51 FR 6308 at 6309 (February 21, 1986)("[T]hese amendments do raise significant new issues not considered in prior waiver decisions. In effect, California's amendments establish new standards * * *").

[43] To the extent that the 2000 rulemaking's amendments to the smallest category are construed as not within-the-scope of EPA's prior authorization, then a full authorization is appropriate and granted.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9115–3]

Science Advisory Board Staff Office; Notification of a Public Meeting and Public Teleconference(s) of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting on March 10–11, 2010 of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter Review Panel to review EPA's *Particulate Matter Urban-Focused Visibility Assessment-Second External Review Draft* (January 2010) and *Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft* (February 2010). The SAB Staff Office also announces a teleconference of the CASAC Particulate Matter Review Panel on April 8, 2010 to review EPA's *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards*—First External Review Draft (February 2010).

An optional public teleconference will be held on April 9, 2010 in the event more time is needed to discuss EPA's *Policy Assessment* following the April 8, 2010 teleconference.

DATES: The public meeting will be held on March 10, 2010 from 8:30 a.m. to 5 p.m. (Eastern Time) and March 11, 2010 from 8:30 a.m. to 2 p.m. (Eastern Time). A public teleconference will be held on April 8, 2010 from 10 a.m. to 2 p.m. (Eastern Time). An additional public teleconference will be held on April 9, 2010 from 10 a.m. to 12 p.m. (Eastern Time) in the event more time is needed.

ADDRESSES: The March 10–11, 2010 meeting will be held at the Marriott in Research Triangle Park, NC, 4700 Guardian Drive, Durham, North Carolina 27703. The public teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting or public teleconferences may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9867; fax (202) 233–0643; or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App 2. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the National Ambient Air Quality Standard (NAAQS) for the six "criteria" air pollutants, including particulate matter (PM). EPA conducts scientific and policy assessments related to both primary (health-based) and secondary (welfare-based) standards for each of these pollutants. As part of that process, the CASAC Particulate Matter Review Panel reviews a series of EPA's assessments that provide the basis for EPA rulemaking.

The purpose of the March 10–11, 2010 meeting is to review second drafts of the *Particulate Matter Urban-Focused Visibility Assessment* (January 2010) and *Quantitative Health Risk Assessment for Particulate Matter* (February 2010). In addition the March 10–11, 2010 meeting will also include a presentation on a first draft of EPA's *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards* (*Policy Assessment,* February 2010). The *Policy Assessment* will serve to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards. The first draft *Policy Assessment* builds upon the key scientific and technical information contained in the Agency's *Integrated Science Assessment for Particulate Matter* (Final Report) (ISA, December 2009) as well as the two draft assessment documents titled *Particulate Matter Urban-Focused Visibility Assessment: Second External Review Draft* (January 2010) and *Quantitative Health Risk Assessment for Particulate Matter: Second External Review Draft* (February 2010). CASAC's deliberations on the first draft *Policy Assessment* will take place during the teleconference scheduled for April 8, 2010 and if more time is needed, on April 9, 2010.

Background information about the formation of the CASAC Particulate Matter Review Panel was published in the **Federal Register** on March 8, 2007 (72 FR 10527–10528). The Panel previously held a public teleconference on November 30, 2007 (announced in 72 FR 63177–63178) to provide consultative advice on EPA's draft *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter* (October 2007) the first document in this review of the PM NAAQS. On April 1–2, 2009, CASAC reviewed the *Integrated Science Assessment for Particulate Matter—First External Review Draft* (December 2008), and provided consultative advice on *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment* (February 2009) and *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Urban Visibility Impact Assessment* (February 2009). The April 1–2, 2009 meeting was announced February 19, 2009 in 74 FR 7688–7689. As announced in 74 FR 46586—46587, on October 5–6, 2009, CASAC reviewed the *Integrated Science Assessment for Particulate Matter—Second External Review Draft* (July 2009) and *Particulate Matter Urban Focused Visibility Assessment-External Review Draft* (September 2009) and *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards-External Review Draft* (September 2009).

Technical Contacts: Any questions concerning *Particulate Matter Urban-Focused Visibility Assessment—Second External Review Draft* (January 2010) should be directed to Ms. Vicki Sandiford, OAR, at *sandiford.vicki@epa.gov* or 919–541–2629. Any questions concerning EPA's *Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft* (February 2010) should be directed to Dr. Zachary Pekar, OAR, at *pekar.zachary@epa.gov* or 919–541–3704. Any questions concerning *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards—First External Review Draft* (February 2010) should be directed to Ms. Beth Hassett-Sipple, OAR, at *hassett-sipple.beth@epa.gov* or 919–541–4605.

Availability of Meeting Materials: All meeting materials (agenda, charge

questions, preliminary comments and other materials) for the March 10–11, 2010 meeting and the April 8, 2010 and April 9, 2010 teleconferences will be placed on the CASAC Web site on the Web pages for those public meetings, accessible through the calendar link on the blue navigational bar at *http://www.epa.gov/casac.* The *Particulate Matter Urban-Focused Visibility Assessment:* (January 2010) is available at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.* The *Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft* (February 2010) will be available on or about February 5, 2010 at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.* The *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards: First External Review Draft* (February 2010) will be available on or about February 26, 2010 at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pa.html.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the March 10–11, 2010 meeting, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than March 4, 2010. Individuals making oral statements will be limited to five minutes per speaker. To be placed on the public speaker list for the April 8, 2010 teleconference, interested parties should notify Dr. Stallworth, DFO, by e-mail no later than April 1, 2010. Individuals making oral statements on the teleconference will be limited to three minutes per speaker. *Written Statements:* Written statements for the March 10–11, 2010 meeting should be received in the SAB Staff Office by March 4, 2010, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements for the April 8, 2010 teleconference should be received in the SAB Staff Office by April 1, 2010. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: February 16, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–3518 Filed 2–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9116–5]

RIN 2040–AF10

Stakeholder Meeting Regarding Revisions to the Unregulated Contaminant Monitoring Regulation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act (SDWA) requires the Environmental Protection Agency (EPA) to promulgate regulations establishing criteria for a monitoring program for unregulated contaminants. Monitoring varies based on system size, source water, and contaminants likely to be found. SDWA also specifies that for systems serving 10,000 persons or fewer, only a representative sample of systems must monitor. Per SDWA, EPA is required to issue, every five years, a list of not more than 30 unregulated contaminants to be monitored by public water systems. The first list of unregulated contaminants was published on September 17, 1999, and the second list on January 4, 2007. The third list is scheduled to be proposed by November 2010.

The purpose of this notice is to announce a public stakeholder meeting to present information to stakeholders concerning the status of the Agency's efforts in the areas of analyte selection, analytical methods, sampling design, determination of minimum reporting levels, and other possible revisions to the current Unregulated Contaminant Monitoring Regulation.

DATES: The meeting will be held on April 7, 2010, from 9 a.m. to 5 p.m., Eastern Daylight Saving Time.

ADDRESSES: The public meeting will be held at the Crystal City Marriott at Reagan National Airport, in the Salon D Room, at 1999 Jefferson Davis Highway, Arlington, VA 22202. The hotel is located near the Ronald Reagan Washington National Airport, and has access to the Crystal City Station on the Blue and Yellow Lines of the Washington Metrorail System (Metro). The Marriott's telephone number is (703) 413–5500.

FOR FURTHER INFORMATION CONTACT: General background information, please contact the Safe Drinking Water Hotline, phone: (800) 426–4791 or (703) 412–3330. Technical information contact David J. Munch or Brenda D. Parris, USEPA, Office of Ground Water and Drinking Water, Mail Code 140, 26 West Martin Luther King Drive, Cincinnati, OH 45268, or by e-mail: *munch.dave@epa.gov* or *parris.brenda@epa.gov.* An informational package will be prepared and available at the meeting. If you wish to receive this package prior to the meeting, contact Maureen Devitt Stone of The Cadmus Group at *maureen.stone@cadmusgroup.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Statements from the public will be taken if time permits. This meeting will be held in a building that is accessible to persons using wheelchairs and scooters. Any person needing special accommodations at this meeting, including wheelchair access, should contact Susan Bjork of The Cadmus Group at (617) 673–7166 or *susan.bjork@cadmusgroup.com,* as soon as possible, but preferably no less than five business days before the scheduled meeting.

Dated: February 18, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–3534 Filed 2–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9114–8]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of North Pole (the City) Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Acting Regional Administrator of EPA Region 10 is hereby granting a waiver of the Buy America requirements of ARRA Section

1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City for the purchase of ORION ® Water Meter Monitor with Leak Detection Indicator in-home water meter monitors manufactured in Malaysia by Escatech, Inc., under license from Badger Meter, Inc., located in Milwaukee, Wisconsin. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The waiver applicant states that the Badger in-home water meter monitors are the only devices that are compatible with the water meter heads installed by the City since 2007. No other water meter monitors meet satisfactory quality to meet the specifications.

The Acting Regional Administrator is making this determination based on the review and recommendations of the Drinking Water Unit. The City has provided sufficient documentation to support their request.

DATES: *Effective Date:* February 11, 2010.

FOR FURTHER INFORMATION CONTACT: Johnny Clark, DWSRF ARRA Program Management Analyst, Drinking Water Unit, Office of Water & Watersheds (OWW), (206) 553–0082, U.S. EPA Region 10 (OWW–136), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for the acquisition of ORION ® Water Meter Monitor with Leak Detection Indicator in-home water meter monitors manufactured in Malaysia by Escatech, Inc., under license from Badger Meter, Inc., located in Milwaukee, Wisconsin. The applicant indicates that Badger in-home water meter monitors are the only devices that are compatible with the water meter heads installed by the City since 2007 and that no other water meter monitors are capable or meeting satisfactory quality to meet the technical specifications. Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

This ARRA-funded project involves implementing a Water Meter Replacement Project by (1) improving efficiency by providing customers with a single meter reading platform and (2) promoting water conservation by providing customers with in-home monitoring devices. Because of extreme winter temperatures that can reach −60° F., the City requires that water meters be installed inside heated structures. Moreover, the in-home monitoring feature strongly promotes water conservation through the early detection and remediation of leaks. The City has used residential water meters supplied by Badger Meter, Inc. since the 1990s. In 2007, the City began replacing the heads on previously installed water meters with water meter heads containing a new transmitting technology, also from Badger Meter, Inc. The replacement Badger water meter head transmits a radio signal that can only be read by Badger Meter licensed meter reading technology including the in-home water meter monitoring units which are the subject of this waiver request. The City has completed the installation of approximately 425 of these meters, with the cost of procuring and installing the remaining approximately 100 replacement meters to be supported by this ARRA assistance agreement.

An inquiry by EPA's national contractor confirmed that no other electronic monitoring device is compatible with the Badger meter transmitter system. Based on available information, it is unlikely that another in-home meter monitoring device that is not licensed by Badger Meter, Inc. would function with the City's existing meter configuration. Use of another meter monitoring system would thus likely require replacement of the existing 425 meters and transmitters.

EPA finds these considerations as stated by the City provide ample functional justification for their specification of these meters, particularly because the use of meters with the specified features is required for their effective performance in the respects required by the City. Further, as the City initiated its procurement and installation of these meters in 2007, well before the enactment of ARRA, the decision to do so was clearly not an attempt to avoid application of the Buy American provisions of ARRA. Therefore, the City's specifications for the particular Badger Meter model and features were justified.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009", defines "satisfactory quality " as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The City has provided information to the EPA representing that there are currently no domestic manufacturers of the in-home water meter monitors that meet the project specification requirements. Based on additional research by EPA's consulting contractor (Cadmus), and to the best of the Region's knowledge at this time, there does not appear to be any other manufacturers capable of meeting the City's specifications.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less effective project. The imposition of ARRA Buy American requirements on such projects eligible for DWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA; to create or retain jobs.

The Drinking Water Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28, 2009, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009" Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of production of this product in the United States in sufficient and reasonably available

quantities and of a satisfactory quality in order to meet the City's design specifications. The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase ORION ® Water Meter Monitor with Leak Detection Indicator in-home water meter monitors manufactured in Malaysia by Escatech, Inc., under license from Badger Meter, Inc., located in Milwaukee, Wisconsin as specified in the City's request of November 23, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: P.L. 111–5, section 1605.

Issued on: February 11, 2010.

Michelle L. Pirzadeh,

Acting Regional Administrator, EPA, Region 10.

[FR Doc. 2010–3525 Filed 2–22–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, February 18, 2010 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2010.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3957.

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010–3322 Filed 2–22–10; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

February 17, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments by April 26, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via e-mail at *Nicholas_A._Fraser@omb.eop.gov* and to Cathy Williams, Federal Communications Commission (FCC), via e-mail at *Cathy.Williams@fcc.gov* and to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: Form 333.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents and Responses: 758 respondents and 758 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: Annual Reporting Requirement.

Total Annual Burden: 4,548 hours.

Total Annual Cost: None.

Obligation to Respond: Mandatory. The statutory authority for this information collection is in Sections 4(i) and 623(k) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: If individual respondents to this survey wish to request confidential treatment of any data provided in connection with this survey, they can do so upon written request, in accordance with Sections 0.457 and 0.459 of the Commission's rules. To receive confidential treatment of their data, respondents need only describe the specific information they wish to protect and provide an explanation of why such confidential treatment is appropriate.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act") requires the Commission to publish annually a report on average rates for basic cable service, cable programming service, and equipment. The report must compare the prices charged by cable operators subject to effective competition and those that are not subject to effective competition. The Annual Cable Industry Price Survey is intended to collect the data needed to prepare that report. The

data from these questions are needed to complete this report.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Draft, Not Yet Approved by OMB

OMB Control Number: 3060–0647

Proposed 2010 Cable Service Price Survey Questionnaire, FCC Form 333

A. Community

The information in entries A1 through A3 below has been imported from the Cable Operations & Antenna (COALS) database. Please review this data and make any necessary corrections. If you would like the COALS database updated to reflect this information, click here:

A1. 6-digit community unit identification. (CUID) (1/1/10)

A2. Name of the community associated with this CUID. (1/1/10)

A3. Name of county in which the community is situated. (1/1/10)

A4. 5-digit Zip Code in community with the highest number (or significant portion) of subscribers. (1/1/10)

Local governments have authority to regulate the price of the basic service tier unless the FCC grants an "Effective Competition" petition for the franchise area. If the FCC has granted Effective Competition status, the answer to question A5 is "no". If the FCC has not granted Effective Competition status, the answer depends on whether the local government exercises its authority to regulate the price of the basic service tier.

A5. Does the local government regulate the basic tier rate in this community? (yes/no) (1/1/10)

A6. Did you operate a video service in this community on 1/1/2009? (yes/no)

System

The information in entries A7 through A9 has been imported from the Cable Operations & Antenna (COALS) database. Please review the data and make any necessary corrections. If you would like the COALS database updated to reflect this information, click here.

A7. Name of cable system. (1/1/10)

A8. Street address and/or POB. (1/1/10)

A9. City, State and Zip Code. (1/1/10)

Parent Company

A10. Name of ultimate parent entity. (1/1/10)

A11. Name of survey contact person. (1/1/10)

A12. E-mail address of contact person. (1/1/10)

A13. Area Code & telephone number. (1/1/10)

A14. Number of video subscribers nationwide of parent entity. (1/1/10)

Certification

I certify that I have examined this report and all statements of fact herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith. Willful false statements made on this form are punishable by fine and/or imprisonment (U.S. Code, Title 18, Section 1001) and/or forfeiture (U.S. Code, Title 47, Section 503).

A15. Name.

A16. Title.

A17. Date.

A18. Choose the system physical infrastructure that best describes your system from the drop down menu (hybrid fiber-coaxial cable, fiber to the home, twisted copper pair, other—please explain).

A19. Answer "yes" to one of Questions a–f, or explain in g, the scenario which best describes the way local broadcast television station signals you receive from local broadcasters are sent from the cable headend to subscribers.

a. System is analog only. Analog broadcast signals are received at the headend and sent to subscribers in analog format. No headend equipment is in place to convert a digital broadcast signal to analog format. (1/1/10)

b. System is analog only. Signals are sent in analog format from headend to subscribers. Headend equipment is in place to convert a broadcaster's digital signal to analog format, in case a station is digital only. (1/1/10)

c. Separate analog/digital signals are sent on separate paths from the headend to be viewed by analog and digital customers, respectively. Digital signal can be either SD or HD, with an HD version being converted by a SD digital subscriber's set-top box to SD format. (1/1/10)

d. Separate analog/SD digital/HD digital signals are sent from the headend to be viewed by analog, SD digital, and HD digital customers, respectively. (1/1/10)

e. SD digital signals only are sent from the headend, and the set-top box can covert the signals to analog format for viewing on analog television. (1/1/10)

f. HD digital signals only are sent from the headend, and the set-top box can convert the signals to SD digital format, and then to analog format if necessary. (1/1/10)

g. If none of the above, please describe.

A20. Number of local broadcast television stations transmitted over your system in this community. Count each local broadcast station only once. For example, if a local broadcast station is carried on one channel and simulcast in HD on another channel, these two channels count as one station for purpose of this question. (1/1/10)

A21. Of the local broadcast stations above, how many are carried under the FCC must-carry rules, *i.e.,* not under retransmission consent? (Enter "0" if none.) (1/1/10)

A22. Of all the stations (must carry and retransmission consent), how many can be viewed in HD format? (Enter "0" if none.) (1/1/10)

A23. Of only the stations carried under the must-carry rules, how many can be viewed in HD format? (Enter "0" if none or if you have no must-carry stations.) (1/1/10)

B. Video Subscribers, Prices and Channels

Responses to questions B1 and B2 may be at the level of the video (or cable) system. In defining your system, use the smallest physical system area surrounding the community for which you maintain subscriber counts for video services.

B1. Number of households passed (households your system currently reaches and could provide service, regardless of whether or not these households subscribe to your service). (1/1/10)

B2. Number of video subscribers. (1/1/10, 1/1/09)

Responses to "yes/no" questions below, as well as responses for prices and channels should be provided at the community level. Number of subscribers may be in the system area.

B3. Total number of channels available in the community.* (1/1/10, 1/1/09)

B4. Do you offer high-speed Internet access? (yes/no) (1/1/10, 1/1/09)

* Count local broadcast stations, PEG channels, commercial leased access channels, and any networks viewable for customers. The count should include the maximum number of channels available, including channels that would require additional equipment, such as an SD or an HD converter box. Do not count audio-only channels such as DMX music suite. Do count premium, pay-per-view or other pay channels. A Video-on-Demand channel can be counted as one channel.

Basic Service Tier (BST)

BST is the entry level video (cable) TV programming package that subscribers can purchase. Typically, BST is a "limited basic" service which consists of local broadcast channels; public, educational, and governmental access (PEG) channels; and a few national and/or other channels. In contrast to the "limited basic" tier just described, some operators only offer a BST bundled with a large number of national networks. For these operators, the bundled service should be reported as the BST. Whether limited basic or bundled, the BST should be the entry-level service that is required for all customers.

B5. Is the BST a "limited basic" as described above? (yes/no) (1/1/10, 1/1/09)

B6. Name of tier. (If there is none, enter "na" for not applicable.) (1/1/10, 1/1/09)

B7. How many subscribers take only the basic service tier (BST)? (1/1/10, 1/1/09)

B8. Monthly price: Basic cable service tier (BST) (1/1/10, 1/1/09)

B9. Number of channels on the BST.* (1/1/10, 1/1/09)

B10. Is equipment needed to view the channels on the BST? (yes/no) (1/1/10, 1/1/09)

B11. What is the monthly fee to lease the most commonly-used equipment needed to view the channels on the BST? (1/1/10, 1/1/09)

B12. Identify the features that are included with this equipment: VOD, DVR, HD, other. (1/1/10, 1/1/09)

* Count local broadcast stations, PEG channels, commercial leased access channels, and any networks viewable for customers of the BST. The count should include the maximum number of channels available when purchasing the BST only, including channels that would require additional equipment, such as an SD or an HD converter box. Do not count audio-only channels such as DMX music suite. Do not count premium, pay-per-view or other pay

channels unless they are viewed in the package at no additional charge. A Video-on-Demand channel that offers content at no additional charge can be counted as one channel.

Expanded Basic Service Package

In most cases, expanded basic service includes the limited basic BST channels plus a large number of national networks. However, if you answered "no" to Question B5 (you do not offer a limited basic tier) then BST and expanded basic service are the same, and Questions B13–B19 below are automatically filled.

Check box if this package was not offered last year.

B13. Name of package. (If there is none, enter "na" for not applicable.) (1/1/10, 1/1/09)

B14. Number of subscribers taking this package. (1/1/10, 1/1/09)

B15. Monthly price of package (including the price of the BST). (1/1/10, 1/1/09)

B16. Number of channels in this package (including BST channels).* (1/1/10, 1/1/09)

B17. Is equipment needed to view the channels in this package? (yes/no) (1/1/10, 1/1/09)

B18. What is the monthly fee to lease the most commonly-used equipment needed to view the channels in this package? (1/1/10, 1/1/09)

B19. Identify the features that are included with this equipment: VOD, DVR, HD, other. (1/1/10, 1/1/09)

* Count the maximum number of channels available when purchasing the package, including channels that would require additional equipment, such as an SD or an HD converter box. Do not count audio-only channels such as DMX music suite. Do not count premium, pay-per-view or other pay channels unless they are viewed in the package at no additional charge. A Video-on-Demand channel that offers content at no additional charge can be counted as one channel.

The Next Most-Subscribed Package

For this package include the expanded basic channels plus a group of additional video programming channels. Provide the most popular package that includes at least seven (7) additional non-premium, national cable networks.

Check box if this package was not offered last year.

B20. Name of package. (If there is none, enter "na" for not applicable.) (1/1/10, 1/1/09)

B21. Number of subscribers taking this package. (1/1/10, 1/1/09)

B22. Monthly price of this package (including expanded basic price). (1/1/10, 1/1/09)

B23. Number of channels in this package (including expanded basic channels).* (1/1/10, 1/1/09)

B24. Is equipment needed to view the channels in this package? (yes/no) (1/1/10, 1/1/09)

B25. What is the monthly fee to lease the most commonly-used equipment needed to view the channels in this package? (1/1/10, 1/1/09)

B26. Identify the features that are included with this equipment: VOD, DVR, HD, other. (1/1/10, 1/1/09)

* Count the maximum number of channels available when purchasing the package, including channels that would require additional equipment, such as an SD or an HD converter box. Do not count audio-only channels such as DMX music suite. Do not count premium, pay-per-view or other pay channels unless they are viewed in the package at no additional charge. A Video-on-Demand channel that offers content at no additional charge can be counted as one channel.

Family-Friendly Program Package

B27. As of Jan. 1, 2010, did you offer a family package in this community? (yes/no) (1/1/10). If no, skip to Section C, below.

B28. If you answered yes to question B27, did you report this package in response to the questions already asked about your program packages? (yes/no). If yes, skip to Section C, below.

B29. Name of package. (If there is none, enter "na" for not applicable.) (1/1/10, 1/1/09)

B30. Number of subscribers taking this package. (1/1/10)

B31. Monthly price of this package (including BST price). (1/1/10)

B32. Number of channels in this package (including BST channels).* (1/1/10)

B33. Is equipment needed to view the channels in this package? (yes/no) (1/1/10)

B34. What is the monthly fee to lease the most commonly-used equipment needed to view the channels in this package? (1/1/10)

* Count the maximum number of channels available when purchasing the package, including channels that would require additional equipment, such as an SD or an HD converter box. Do not count audio-only channels such as DMX music suite. Do not count premium, pay-per-view or other pay channels unless they are viewed in the package at no additional charge. A Video-on-Demand channel that offers content at no additional charge can be counted as one channel.

C. Channel Lineup

Rows:

C1. Number of local broadcast stations.

C2. Number of stations above for which a separate simulcast channel is carried.

C3. Number of public, educational & governmental (PEG) access channels.

C4. Number of commercial leased access channels.

Instruction: Do not list local broadcast stations, PEG channels or leased access channels separately. These channels have already been accounted for above. Do not include any networks that are available only through a VOD system.

* **Note:** When entering BST networks, the form automatically includes those networks in the other packages. If a package does not include all of the BST networks, then delete the entries for the appropriate networks for that package. Similarly, when entering expanded basic networks, the form automatically includes those networks in the next most-subscribed package.

Column:

Report number of channels.

Indicate if the channel(s) is on the BST.

Indicate if the channel(s) is on the expanded basic package.

Indicate if the channel(s) is on the next most-subscribed package.

Indicate if the channel(s) is on the family-friendly program package.

Rows listing individual regional and national networks.

Network

A&E
ABC Family
Africa Channel
AMC
AmericanLife TV
Animal Planet
BBC America
BBC World News
BET
BET Gospel
BET Hip-Hop
BET J
Big Ten
Bio
Blackbelt TV
Bloomberg
Bluehighways TV
Boomerang
Bravo
Bridges TV
Canal Sur
Cartoon
CBS: College Sports Ntwk.
Chiller
Cinemax
CMT
CMT Pure Country
CNBC
CNBC World
CNN
CNN en Espanol
CNN Intl. North America
Comedy Central
Crime & Investigation
C–SPAN
Current
De Pelicula
Discovery
Discovery en Espanol
Discovery Familia*
Discovery Health
Discovery Kids
Disney Channel
Disney XD
DIY
E!
Encore
ESPN Classic
ESPN/ESPN HD
ESPN2
ESPNews
ESPNU
FamilyNet
Fine Living
FitTV
Flix
Food Network
Fox Business Network
Fox College Sports
Fox Movie Channel
Fox News
Fox Reality
Fox Soccer Channel

Fox Sports en Espanol
Fuel
Fuse
FX Network
G4 videogame tv
Galavision
Golf Channel
Gospel Music Channel
Great American Country
GSN
Hallmark
Hallmark Movie Channel
HBO
HD Theater
HDNet
HDNet Movies
HGTV
History
History Channel en Esp.
History International
iaTV
Independent Film Channel
Inspiration Network
Investigation Discovery
Lifetime
Lifetime Movie Network
Lifetime Real Women
LOGO
MavTV
MGM HD
Military Channel
Military History
MLB Network
MSNBC
MTV
MTV Hits
MTV Jams
MTV Tr3s
MTV2
mun2
National Geographic
NBA TV
NFL Network
NHL Network
Nick Toons
Nickelodeon
Noggin
Outdoor Channel
Ovation TV
Oxygen
Palladia
PBS Kids Sprout
Planet Green
ReelzChannel
Regional Sports Network
Retirement Living TV
RFD–TV
Science Channel
Showtime
Si TV
Sleuth
Smithsonian Channel HD
SOAPnet
Speed Channel
Spike TV
Starz
style.
Sundance
Syfy
TBS
TCM
Tempo
Tennis Channel
The Movie Channel
The N
The Sportsman Channel
TLC
TNT
Travel Channel
truTV
TV Chile
TV Guide
TV Land
TV One
TVE Internacional
Universal HD
USA
VERSUS
VH–1
VH–1 Classic
VH–1 Soul
Water Channel
WE tv
Wealth TV
Weather
WGN America

FCC Notice Required by the Paperwork Reduction Act

We have estimated that each response to this collection of information will take, on average, 6 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD–PERM, Paperwork Reduction Project (3060–0647), Washington, DC 20554. We will also accept your comments via the Internet if you send them to *PRA@fcc.gov.* Remember—you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0647.

[FR Doc. 2010–3490 Filed 2–22–10; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 18, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 25, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ”Currently Under Review”, (3) click on the downward–pointing arrow in the ”Select Agency” box below the ”Currently Under Review” heading, (4) select ”Federal Communications Commission” from the list of agencies presented in the ”Select Agency” box, (5) click the ”Submit” button to the right of the ”Select Agency” box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–1096.

Title: Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 158 respondents; 1,896 responses.

Estimated Time Per Response: 2.5 – 20 hours.

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. sections 151, 152, 154(i), 201, 202, and 254.

Total Annual Burden: 15,800 hours.

Total Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission does not anticipate providing confidentiality of the information submitted by prepaid calling card providers. Particularly, the prepaid calling card providers must send reports to their transport providers. Additionally, the quarterly certifications sent to the Commission will be made public through the Electronic Comment Filing System (ECFS) process. These certifications will be filed in the Commission's docket associated with this proceeding. If the respondents submit information they believe to be confidential, they may request confidential treatment of such information under 47 CR 0.459 of the Commission's rules.

Need and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. There is no change to the reporting, recordkeeping and/or third party disclosure requirements. There is a 62,900 hour reduction in the total annual burden which is due to a decrease in respondents. This is due in part to an inaccurate number of respondents in the previous submission to the OMB.

Prepaid calling card providers are to report on a quarterly basis the percentage of interstate, intrastate and international traffic and call volumes to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission on a quarterly basis that include the above information and a statement that they are contributing to the federal Universal Service Fund (USF) based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

The Commission adopted the reporting and certification requirements to obtain information necessary to evaluate whether all prepaid calling cards are properly contributing to the USF, pursuant to section 254 of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–3462 Filed 2–22–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 18, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 25, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0816.

Title: Local Telephone Competition and Broadband Reporting (Report and Order, WC Docket No. 07–38, FCC 08–89; Order on Reconsideration, WC Docket No. 07–38, FCC 08–148).

Form No.: FCC Form 477.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 1,790 respondents; 3,580 responses.

Estimated Time Per Response: 289 hours.

Frequency of Response: Semi–annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 201, 218–220, 251–252, 271, 303(r), 332 and 403 of the Communications Act of 1934, as amended; and in section 706 of the Telecommunications Act of 1996, as amended, codified in section 1302 of the Broadband Data Improvement Act, 47 U.S.C. section 1302.

Total Annual Burden: 1,034,620 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission will continue to allow respondents to certify, on the first page of each submission, that some data contained in that submission are privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity making the submission. If the Commission receives a request for, or proposes to disclose the information, the respondent would be required to show, pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission, that the information in question is entitled to confidential treatment. We will retain our current policies and procedures regarding the confidential treatment of submitted FCC Form 477 data, including use of aggregated, non–company specific data in our published reports.

Need and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. The Commission is submitting this information collection to OMB as an extension (no change in the reporting requirement). There is a 50,520 hourly burden reduction that is being reported to OMB. This adjustment is due to a reduction in the estimated time per response from the last submission to the OMB. It is also due to respondents' increased familiarity with the new, online filing procedures and with the changes in their own systems that were necessary to comply with this information collection, which respondents have gained in experience during the two filings required during OMB's one year approval of the data collection on a pilot basis.

This collection improves the Commission's understanding of the extent of broadband deployment, facilitating the development of appropriate broadband policies and the Commission's ability to carry out its obligation under section 706 of the Telecommunications Act of 1996 to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." In addition, the Telecommunications Act of 1996 directs the Commission to take actions to open all participants, including new entrants. A central task in creating his framework is the opening of previously monopolized local telecommunications markets. By collecting timely and reliable information about the pace and extent of competition for local telephony service in different geographic areas, including rural areas, the Commission significantly improves the ability to evaluate the effectiveness of actions the Commission and the states are taking to facilitate economic competition in those areas.

The information is used by Commission staff to prepare reports that help inform consumers and policy makers at the federal and state level of deployment of competition in the local telephone service market and the deployment of broadband services. The Commission will continue to use the information to better inform its understanding of broadband deployment in conjunction with its congressionally mandated section 706 reports. The Commission also uses the data to support this analyses in a variety of rulemaking proceedings under the Communications Act of 1934, as amended. Absent this information collection, the Commission would lack essential data for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–3541 Filed 2–22–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10–31; DA 10–125]

Closed Auction of Broadcast Construction Permits Scheduled for July 20, 2010; Auction 88 Applicants Must Provide Supplemental Information by March 12, 2010; Comment Sought on Competitive Bidding Procedures for Auction 88

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain broadcast FM, AM, and FM Translator construction permits scheduled to commence on July 20, 2010 (Auction 88). This document also seeks comments on competitive bidding procedures for Auction 88.

DATES: Comments are due on or before February 25, 2010, and reply comments are due on or before March 11, 2010. Auction 88 applicants must provide supplemental information by March 12, 2010.

ADDRESSES: You may submit comments, identified by AU Docket No. 10–31, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.
- The Wireless Telecommunications Bureau requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction88@fcc.gov*.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Lynne Milne and Howard Davenport at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2868. Media Bureau, Audio Division: For

service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 88 Comment Public Notice* released on February 4, 2010. The complete text of the *Auction 88 Comment Public Notice,* including Attachments A and B, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 88 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA10–125. The *Auction 88 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/88/,* or by using the search function for AU Docket No. 10–31 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/*.

I. Introduction

1. The Wireless Telecommunications and the Media Bureaus (the Bureaus) announced an auction of certain broadcast FM, AM, and FM Translator construction permits and sought comment on the procedures to be used for this auction. The *Auction 88 Comment Public Notice* also establishes a deadline for the submission to the Commission of an FCC Registration Number (FRN) by each applicant to permit access to the Commission's electronic short-form application filing and auction bidding systems, and provides for dismissal of those application(s) where the applicant fails to provide its FRN by March 12, 2010. This auction, which is designated Auction 88, is scheduled to commence on July 20, 2010. Auction 88 will be a closed auction; only those entities listed in Attachment A to the *Auction 88 Comment Public Notice* will be eligible to participate in this auction.

II. Background

2. Auction 88 will resolve pending closed groups of mutually exclusive applications for full-power FM and FM translator construction permits that have been the subject of various Commission and judicial decisions. Included in these groups are twelve applications that were recently amended to specify operation as commercial broadcast stations. Auction 88 will also resolve mutual exclusivity between applications for new AM stations on 640 kHz and 1230 kHz in the Terre Haute, Indiana, area. The 13 FM application groups and the two FM Translator application groups (all of which are former Mixed Groups), and the three closed AM application groups identified in Attachment A of the *Auction 88 Comment Public Notice* will now proceed to auction.

III. Construction Permits in Auction 88

3. Auction 88 will offer construction permits for 13 commercial FM stations, two commercial FM translator stations, and three commercial AM stations as listed in Attachment A. Attachment A of the *Auction 88 Comment Public Notice* also sets forth proposed minimum opening bids and upfront payments for permits being offered in this auction.

4. An applicant listed in Attachment A of the *Auction 88 Comment Public Notice* may become qualified to bid only if it submits an FRN pursuant to the instructions set forth in the *Auction 88 Comment Public Notice* and meets the additional filing, qualification and payment requirements, as will be further described in future public notices. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A of the *Auction 88 Comment Public Notice.* All applicants within these groups of mutually exclusive applications (MX groups) are directly mutually exclusive with one another, therefore no more than one construction permit will be awarded for each MX group.

IV. Due Diligence

5. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. Bidders are responsible for assuring themselves that, if they win a construction permit, they will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

V. FCC Registration Number Information Required

6. Each applicant is required to submit its FCC Registration Number (FRN) by no later than 5 p.m. Eastern Time (ET) on Friday, March 12, 2010, in order to be able and eligible to participate in Auction 88. Failure to submit an FRN pursuant to the instructions in the *Auction 88 Comment Public Notice* will result in dismissal of the applicant's application(s) and will result in disqualification of the applicant from Auction 88.

7. The Commission's rules require all persons and entities doing business with the Commission to obtain a unique identifying number called the FRN and to provide the FRN with all applications or feeable filings, as well as with other transactions with the Commission involving payment of money. Accordingly, use of an FRN is mandatory for all applicants for Auction 88. Submission of an FRN is necessary to permit each applicant to log in to the FCC's Integrated Spectrum Auction System (ISAS or FCC Auction System) and continue to participate in the auction process.

8. Applicants that do not have an FRN must obtain one by registering using the FCC's Commission Registration System (CORES). To access CORES, point your web browser to the FCC Auctions page at *http://wireless.fcc.gov/auctions/* and click the CORES link under Related Sites. Next, follow the directions provided to register and receive your FRN. Be sure to retain this number and password and keep such information strictly confidential.

9. To submit an FRN, each applicant listed in Attachment A must provide its applicant name and FRN in an e-mail to *auction88@fcc.gov* or fax this information to Kathryn Hostetter at (717) 338–2850. Each applicant's FRN submission also must describe the submitter's relationship to the applicant or must describe the basis for the submitter's authorization to submit an FRN on behalf of the applicant. The Bureaus note that, in some cases, an individual or entity may have obtained multiple FRNs during the time that the applications in Attachment A have been pending. For those applicants listed in Attachment A with a short-form application (FCC Form 175) on file (i.e., the closed AM application groups MM–AM039–640, MM–AM040–1230 and

MM–AM041–750), the applicant must submit the FRN associated with the Taxpayer Identification Number (TIN) that it used in connection with the submission of its initially filed short-form application.

10. For further information, contact the FCC ULS Customer Support Hotline at (877) 480–3201 option 2, (717) 338–2888, or (717) 338–2824 (TTY). The hotline is available to assist with questions Monday through Friday 8 a.m. to 6 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

VI. Submission of Auction Short-Form Applications

11. The Bureaus will specify procedures for Auction 88 applicants to electronically file short-forms applications (FCC Form 175) in ISAS in a future public notice. Those procedures will include instructions for reporting changes pursuant to 47 CFR 1.65. Applicants are reminded that certain changes may be considered a major modification of an application and could result in dismissal of the application and disqualification of an applicant from participation in Auction 88.

VII. Bureaus Seek Comment on Auction Procedures

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

12. The Bureaus proposed to auction all construction permits included in Auction 88 using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Round Structure

13. The Commission will conduct Auction 88 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

14. The auction will consist of sequential bidding rounds, each followed by the release of round results. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

15. The Bureaus proposed to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iii. Stopping Rule

16. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction 88, the Bureaus proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted in this auction). Thus, unless the Bureaus announce alternative procedures, bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the auction will last.

17. Further, the Bureaus proposed to retain the discretion to exercise any of the following options during Auction 88: (1) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2) Declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close; and (3) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

18. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureaus proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

19. For Auction 88, the Bureaus proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity

rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

20. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these considerations in mind, the Bureaus proposed the upfront payments set forth in Attachment A of the *Auction 88 Comment Public Notice.* The Bureaus seek comment on this proposal.

21. The Bureaus further proposed that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureaus proposed that each construction permit be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction 88 Comment Public Notice,* on a bidding unit per dollar basis. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. A bidder may place bids on multiple construction permits, provided that (1) each such construction permit is designated for that bidder in Attachment A of the *Auction 88 Comment Public Notice,* and (2) the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

ii. Activity Rule

22. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating.

23. The Bureaus proposed a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on one hundred (100) percent of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal.

iii. Activity Rule Waivers and Reducing Eligibility

24. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

25. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder that is eligible to bid on only one construction permit has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, eliminating the bidder from the auction. If a bidder that is eligible to bid on more than one construction permit has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

26. A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

27. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals (if bid withdrawals are permitted in this auction), or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

28. The Bureaus proposed that each bidder in Auction 88 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

29. The Bureaus proposed to establish minimum opening bid amounts for Auction 88. The Bureaus believe a minimum opening bid amount, which has been used in other broadcast auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureaus do not propose to establish a separate reserve price for the

construction permits to be offered in Auction 88.

30. For Auction 88, the Bureaus proposed minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. A proposed minimum opening bid amount for each construction permit available in Auction 88 is set forth in Attachment A of the *Auction 88 Comment Public Notice.* The Bureaus seek comment on these proposals.

31. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast FM, AM and FM Translator station and any other relevant factors.

v. Bid Amounts

32. The Bureaus proposed that, in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

33. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

34. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.

35. For Auction 88, the Bureaus proposed to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus proposed to use a bid increment percentage of 5 percent.

36. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

vi. Provisionally Winning Bids

37. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

38. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

39. For Auction 88, the Bureaus proposed the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that

round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

40. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 88. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. If permitted, a bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules.

41. In Auction 88, bidders will have limited opportunity to aggregate construction permits because of the pre-established closed MX Groups. Moreover, bid withdrawals, particularly those made late in Auction 88, could result in delays in licensing new broadcast FM, AM and FM Translator stations and attendant delays in the offering of new broadcast service to the public. The Commission also has noted that in some instances bidders may seek to withdraw bids for improper purposes. Based on this Commission guidance, on the experience of the Bureaus with past broadcast auctions, and on the potential for delays in providing broadcast service to the public, for this auction the Bureaus proposed to prohibit bidders from withdrawing any bids after the round has closed in which bids were placed. The Bureaus seek comment on this proposal.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

42. If withdrawals are allowed in this auction, the Bureaus seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

43. The Commission's rules provide that, in advance of each auction, a percentage shall be established between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, there are few synergies to be captured by combining construction permits.

44. Applying the reasoning that a higher interim withdrawal payment percentage is appropriate when aggregation of construction permits is not expected, as with the construction permits subject to competitive bidding in Auction 88, if the Bureaus allow bid withdrawals in this auction, the Bureaus proposed the maximum interim withdrawal payment allowed under the current rules. Specifically, the Bureaus proposed to establish an interim bid withdrawal payment of twenty percent of the withdrawn bid for this auction. The Bureaus seek comment on this proposal.

ii. Additional Default Payment Percentage

45. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

46. The Commission's rules provide that, in advance of each auction, a percentage shall be established between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. The Commission has indicated that the level of the additional payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the construction permits being offered.

47. As previously noted by the Commission, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults. In light of these considerations for Auction 88, the Bureaus proposed an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

48. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Auction 88 Applicants

Albert Benavides
Amor Radio Group Corp.
Aritaur Communications, Inc.
Arkansas Valley Broadcasting, LLC
BBK Broadcasting
Big Sky Company
Birach Broadcasting Corporation
Boat Of Steam Broadcasting
Bott Broadcasting Company
Central Michigan University
Colorado Alpine Broadcasting Company
Contemporary Media Inc.
Coyote Communications, Inc.
CTS Communications Development Corp.
Darby Radio Enterprises
David Fleisher & Melissa Krantz
Directel Inc.
EB Needles LLC
Educational Media Foundation

Eric P. Straus
Evandel Ministries Inc.
Evangel Ministries, Incorporated
Fort Bend Broadcasting Company Inc.
Four Corners Broadcasting LLC
George S. Flinn, Jr.
Good News Media Inc.
Grace Communications L.C.
Harry Media
Hawkeye Communications, Inc.
Jem Broadcasting Co., Inc.
KM Communications, Inc.
KRJ Company
La Capra Corporation
Lancer Media
Marist College
Metro Broadcasters-Texas Inc.
Metro North Communications Inc.
Michael R. Walton Jr.
Mid-America Radio Group Inc.
MTD, Inc.
Music Express Broadcasting, Corp.
Music Ministries, Inc.
Oxford Radio Inc.
Peace Broadcasting Network
Penn-Jersey Educational Radio Corp.
Poor Mountain Broadcasting
Positive Alternative Radio, Inc.
Powell Meredith Communications Company
Radio Rosendale
Ramar Communications Inc.
Ramsey Leasing, Inc.
Robert Durango LLC
Robert M. McDaniel
Rocky Mountain Radio Company LLC
Romar Communications, Inc.
Rosen Broadcasting, Inc.
S.I. Broadcasting
Sacred Heart University, Inc.
Salija Bokram/Michael J. St. Cyr
Sarkes Tarzian Inc.
South Shore Broadcasting, inc.
Southern Cultural Foundation
Steven Dinetz
The MacDonald Broadcasting Company
Tri-County Radio, Incorporated
William S. Poorman
Willtronics Broadcasting Co.
Word Power, Inc.
WTCM Radio, Inc.
Yampa Valley Broadcasting Inc.

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2010–3583 Filed 2–22–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of a Currently Approved Collection (3064–0127); Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking public comment on the proposed renewal of its Occasional Qualitative Surveys information collection (OMB No. 3064–0127). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the FDIC should modify the collection prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before April 26, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.*
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Federal Deposit Insurance Corporation, F–1072, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about this renewal, please contact Gary A. Kuiper, by telephone at 202.898.3877 or by mail at the address identified above.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to renew this collection:

Title: Occasional Qualitative Surveys.

Estimated Number of Respondents and Burden Hours:

FDIC document	Number of surveys	Hours per survey	Number of respondents	Burden hours
Occasional Qualitative Surveys	15	1	850	12,750
Total	15	1	850	12,750

General Description of Collection: The information collected in these surveys is anecdotal in nature, that is, samples are not necessarily random, the results are not necessarily representative of a larger class of potential respondents, and the goal is not to produce a statistically valid and reliable database. Rather, the surveys are expected to yield anecdotal information about the particular experiences and opinions of members of the public, primarily staff at respondent banks or bank customers. The information is used to improve the way FDIC relates to its clients, to develop agendas for regulatory or statutory change, and in some cases to simply learn how particular policies or programs are working, or are perceived in particular cases.

Current Action: The FDIC is proposing to renew this information collection.

Request for Comment

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–3411 Filed 2–22–10; 8:45 am]

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FEDERAL MARITIME COMMISSION

[Petition P1–08]

Petition of the National Customs Brokers and Forwarders Association of America, Inc., for Exemption From Mandatory Tariff Publication

Comments of the U.S. Department of Justice

Christine A. Varney, *Assistant Attorney General.*
Donna N. Kooperstein, *Chief.*
William H. Stallings, *Assistant Chief.*
Molly S. Boast, *Deputy Assistant Attorney General.*
Michele B. Cano, *Attorney.*
Oliver M. Richard, *Assistant Chief.*
John R. Sawyer, Economist, *Economic Analysis Group.*
U.S. Department of Justice,
Antitrust Division,
Transportation, Energy & Agriculture Section,
450 Fifth Street, NW.,
Washington, DC 20530.

Dated: February 5, 2010.

Comments

The United States Department of Justice ("Department") files these comments in support of the petition of the National Customs Brokers and Forwarders Association of America, Inc. ("the Petition") requesting an exemption for non-vessel-operating common carriers ("NVOCCs") from certain tariff publishing and enforcement requirements. NVOCC tariff publishing requirements impose significant costs that limit competition, resulting in higher shipping rates. These costs far outweigh any justification. The Department has long supported exempting NVOCCs from all tariff-publishing requirements to produce the greatest competitive benefits.[1] Granting the relief requested by the Petition would represent a meaningful step in that direction by reducing unnecessary burden and enhancing competition.

A. NVOCC Tariff-Publishing Requirements

Many shippers of overseas cargo, particularly smaller ones, book shipments through NVOCCs instead of contracting directly with the operators of ocean-going vessels ("vessel-operating common carriers" or "VOCCs"). NVOCCs provide a variety of services for their shipper customers. By negotiating service contracts with VOCCs for the aggregated volume of their shipper customers' cargoes, NVOCCs can obtain better rates than individual shippers could obtain on their own. In addition, many NVOCCs provide intermodal combinations of ocean and inland transportation services. Some add still other services to their transportation packages, such as packing, loading, labeling, warehousing, customs clearance, supply-chain management and other logistical services.

The Shipping Act of 1984 requires that each common carrier, including NVOCCs, publish tariffs showing all "rates, charges, classifications, rules, and practices between all points or ports."[2] Tariffs must be published for all rates that are charged shippers regardless of whether the particular rate has been individually negotiated and, in addition to detailing the rates to be charged, must provide information about the places between which cargo will be carried, each classification of cargo in use, any rules that affect the total of the rates or applicable charges, and samples of contracts and bills of lading. The Act provides for substantial fines for each instance of non-compliance.

Tariff publishing requirements place a particularly high burden on NVOCCs due to the nature of their business. As explained in multiple comments filed in this proceeding, NVOCCs typically handle small to mid-size shipments on a spot basis rather than through long-term contracts. Shippers routinely contact NVOCCs to negotiate rate quotes to move a particular shipment at a specific time. NVOCCs in turn deal with multiple VOCCs to provide the actual transportation, and the VOCCs frequently adjust rates and surcharges they impose on the NVOCCs. As a result, NVOCCs typically tailor their charged rates to the specific circumstances of each shipment and, accordingly, must make frequent tariff filings and adjustments to meet the regulatory requirements. This is a costly and burdensome process.[3]

The Federal Maritime Commission ("Commission") has issued rule changes in which it has used its exemption authority under § 16 of the 1984 Shipping Act, later broadened by the Ocean Shipping Reform Act ("OSRA"),[4] to relieve NVOCCs from certain tariff publication requirements. Most notably, the Commission has exempted from full tariff-publishing requirements certain formal written contracts between NVOCCs and shippers ("NVOCC Service Arrangements" or "NSAs").[5] The rule allows the contracting parties to keep competitively sensitive aspects of the agreement (such as price and quantity) confidential. However, NVOCCs still have to file the agreements with the Commission and publish their essential terms in tariff form.[6] This raises the same cost and burden issues NVOCCs face under the general tariff publishing rules.[7] NSAs are not widely used.[8]

[1] *See* FMC Petition No. P3–03, Comments of the United States Department of Justice on Petition of United Parcel Service for an Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts (Oct. 10, 2003) ("DOJ Comments in P3–03"); Comments of the U.S. Department of Justice, FMC Docket No. 4–12 (Dec. 3, 2004) ("DOJ Comments in 4–12"); Comments of the U.S. Department of Justice, FMC Docket No. 05–06 (Oct. 20, 2005) ("DOJ Comments in 05–06").

[2] *See* 46 U.S.C. 40501 (formerly Section 8 of the Shipping Act).

[3] For example, the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") estimates that tariff publication expenses can be as much as $240,000 per year. NCBFAA Petition at 8. *See also* Comments of Global Link Logistics at 2 ("The cost to a small NVOCC to comply with tariff publishing requirements is a hardship. At GLL we spend in excess of $200,000 annually."); Comments of A.N. Deringer at 2 ("Our tariff rate publishing and management costs are an additional expense. The labor needed to produce the number of quotes, manage carrier updates, and keep our tariff current requires an additional investment of over $75,000 annually."); Comments of C.H. Robinson Worldwide at 2 ("[T]he average cost for tariff filings per annum exceeds over $130,000."); and Comments of NACA Logistics (USA) at 2 ("The full costs of establishing a tariff Web site, rate tariff publication, maintenance of same, internal IT development and the costs of personnel assigned to tariff compliance is estimated at $100,000 annually in resources. We feel this is a high cost for a system that is not utilized by the shipping public.").

[4] 46 App. U.S.C. 1715 (1998).

[5] An NSA is essentially a contract between an NVOCC and a shipper in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. *See* 46 CFR 531.3(p) (2005).

[6] FMC Docket No. 04–12, 69 FR 75850 (Dec. 20, 2004).

[7] *See, e.g.,* Comments of RS Express at 1–2 (filing NSAs is a cumbersome process that is worthwhile only for major contracts).

[8] In 1998, OSRA gave VOCCs and their shipper customers the right to enter freely into confidential service contracts, without the need to publish commercially sensitive terms and conditions. VOCCs typically enter into long-term contracts with large shippers that routinely ship significant quantities of cargo. In contrast, NVOCCs enter into formal, long term contracts much less frequently. The Petition states that in 2007, VOCCs filed 43,699 original service contracts compared to 762 original NSAs filed by NVOCCs for the same time period. NCBFAA Petition at 8.

B. The Petition

The Petition seeks to broaden the filing exemption to cover those instances where an NVOCC has individually negotiated rates with its shipping customers and memorialized those rates in writing.[9] In other words, while the NSA rule exempts formal contracts from tariff publication and enforcement requirements, the Petition's request would cover short-term "spot market" rate agreements between NVOCCs and shippers, by far the most common transaction for NVOCCs. Other parties interested in this proceeding have submitted comments requesting that the Commission further expand the requested exemption to apply to service terms negotiated in conjunction with rates (*i.e.,* vessel capacity, cargo loss and damage rules, equipment needs and delivery requirements).

C. The Department Supports the Petition

The proposed elimination of the NVOCC tariff publication requirements is an appropriate exercise of the Commission's exemption authority under 46 U.S.C. 40103(a), which allows the Commission to exercise its exemption authority if the exemption "will not result in a substantial reduction in competition or be detrimental to commerce." That standard is clearly met here.

As the Department explained in prior comments, "exempting all NVOCCs from all tariff publication requirements would produce the greatest competitive benefits."[10] Even the more limited approach set-forth in the Petition would create important benefits. The current tariff filing requirement hampers an NVOCC's ability to respond quickly in the marketplace. The proposed exemption will allow NVOCCs to be more flexible in a dynamic contractual environment, thereby allowing them to be more responsive to their shippers' needs. It would likely promote competition and commerce by eliminating substantial regulatory costs to NVOCCs, a savings that could be passed on to its shipper customers in the form of lower shipping rates.

The costs associated with the tariff publication requirement greatly exceed any benefits. As the NCBFAA noted, tariffs are rarely, if ever, reviewed or consulted by shippers to determine ocean shipping rates.[11] When even the purported beneficiaries of tariff publication requirements find little value in them, the cost of requiring publication of those tariffs clearly exceeds any competitive or commercial benefits. Moreover, if tariff publications were of value to shippers, any NVOCC would remain free to publish them.

Conclusion

In conclusion, the Department supports the goal of the relief requested in the Petition to further exempt NVOCCs from tariff publishing and enforcement requirements.

U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street, NW., Washington, DC 20530.

Michele B. Cano,

Attorney.

[FR Doc. 2010–3325 Filed 2–22–10; 8:45 am]

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[9] The proposed exemption would incorporate the following principles: (1) The exemption would be voluntary, (2) the exemption would apply only to rate tariffs, not rules tariffs, (3) disputes concerning negotiated rates would be governed solely by contract law, (4) NSAs would continue to be filed with the FMC and NSA essential terms would continue to be published, (5) all negotiated rates would be required to be memorialized in writing, (6) the FMC would retain access to the negotiated agreements and any underlying written communications, (7) the exemption would not be construed to convey antitrust immunity to NVOCCs, and (8) the exemption would only apply to licensed or registered NVOCCs. NCBFAA Petition at 11.

[10] DOJ Comments in P3–03 at 1–2.

[11] NCBFAA Petition at 9, note 11.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Policy, Strategic Plan, Adoption/Certification, and Nationwide Health Information Infrastructure (NHIN) workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during March 2010: March 4th Meaningful Use Workgroup, 10 a.m. to 12 p.m./Eastern Time; March 9th Strategic Plan Workgroup, 9 a.m. to 12 p.m./Eastern Time; March 16th NHIN Workgroup, 2:30 p.m. to 5 p.m./Eastern Time; March 25th Privacy & Security Policy Workgroup, 2 to 4 p.m./Eastern Time; and March 29th Adoption/Certification Workgroup, 10 a.m. to 12 p.m./Eastern Time.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov*. Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that effect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* meaningful use, the NHIN, privacy and security policy, adoption/certification, or strategic planning. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 5, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–3547 Filed 2–22–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations Vocabulary, Clinical Quality, Implementation, and Privacy & Security workgroups.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during March 2010: March 8th Implementation Workgroup, 9 a.m. to 4 p.m./Eastern Time; March 22nd Implementation Workgroup, 3 to 4 p.m./Eastern Time; March 23rd Clinical Operations Vocabulary, 9 a.m. to 4 p.m./Eastern Time; March 26th Privacy & Security Workgroup, 2 to 4 p.m./Eastern Time; March 30th Implementation Workgroup, 9 to 11 a.m./Eastern Time; March 31st Clinical Quality Workgroup, 10 a.m. to 12 p.m./Eastern Time.

Location: All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that effect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 5, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–3548 Filed 2–22–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Advisory Council on Faith-Based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council on Faith-Based and Neighborhood Partnerships announces the following meetings:

Name: President's Advisory Council on Faith-based and Neighborhood Partnerships Council Meetings.

Time and Date: Tuesday, March 9th 9 a.m.–3 p.m. (EST).

Place: Meeting will be held at a location to be determined in the White House complex, 1600 Pennsylvania Ave., NW., Washington, DC. Space is extremely limited. Photo ID and RSVP are required to attend the event. Please RSVP to Mara Vanderslice to attend the meeting no later than March 3rd, 2010 at: *mvanderslice@who.eop.gov.*

There will also be a conference call line available for those who cannot attend the meeting in person. The call-in line is: 800–857–8628, Passcode: 5091968.

Status: Open to the public, limited only by space available. Conference call limited only by lines available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person for Additional Information: Please contact Mara Vanderslice for any additional information about the President's Advisory Council meeting at *mvanderslice@who.eop.gov.*

Agenda: Presentation of the Council's final report to government officials, including six areas of focus: Economic Recovery and Domestic Poverty, Reform of the Office, Environment and Climate Change, Inter-Religious Cooperation, Fatherhood and Healthy Families and Global Poverty and Development. For copies of these reports, please contact Mara Vanderslice at *mvanderslice@who.eop.gov.*

Please visit *http://www.whitehouse.gov/partnerships* for further updates on the Agenda for the meeting.

Public Comment: There will be an opportunity for public comment at the end of the meeting.

Dated: Feb. 17, 2010.

Mara L. Vanderslice,

Special Assistant.

[FR Doc. 2010–3559 Filed 2–22–10; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Investigating the Causes of Post Donation Information (PDI): Errors in the Donor Screening Process

SUMMARY: In compliance with the requirement of Section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Investigating the causes of post donation information (PDI): Errors in the donor screening process. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Blood centers are required to use a health history screening questionnaire to obtain eligibility information for the protection of the donor and recipient prior to blood donation. However, the health history process is known to be error-prone and the reasons for those errors are largely unknown and untested. Donors often fail to report a risk that would have resulted in deferral. This deferral risk may be disclosed at a subsequent donation and is classified as Post Donation Information (PDI). While this deferral risk may be at the next donation event, many examples of PDI are not disclosed nor discovered until several intervening donation events have occurred. The reasons why donors fail to disclose a deferrable history at the time of one donation but subsequently disclose this information at a later time are unidentified. This protocol is designed to ascertain why PDI error events occur. It will be the first study of any kind to address the issue of PDI errors in any systematic fashion. By conducting interviews with donors involved in PDI errors, we will gain important qualitative knowledge about this problem. Information gathered from these interviews will not only elucidate the issue of PDI but will provide insight into donor understanding of the screening process and their feelings about the process and blood donation in general.

The main objectives of the study are:

1. To explore reasons behind errors in the donor screening process when donors initially fail to disclose an accurate and complete health history.

2. To explore PDI donors' knowledge, attitudes, behaviors and beliefs (KABB) about the health history questionnaire and their experience with the screening process and the center.

3. To compare KABB in PDI donors to deferred (but not PDI) donors and accepted donors.

The study sample will consist of three donor groups:

1. Donors with a PDI: all identified donors of interest with an FDA reportable donor suitability error classified as PDI at the REDS–II centers

2. Deferred donors: appropriately deferred (but not PDI deferred donors) at the REDS–II centers

3. Accepted Donors: appropriately accepted for donation at the REDS–II centers

Telephone interviews will be conducted with consented donors to collect information regarding their knowledge, attitudes, behaviors and beliefs about the donor health history process. Even though the interviews with the donors will be individual, we would like to form groups of similar PDI and deferred donors for analysis purposes.

The five groups of interest include PDI occurrences or deferrals that are due to

- Travel (malaria, vCJD)
- Medical (history of diseases including jaundice/hepatitis, surgery and medications needed to treat disease including Tegison, Proscar and Accutane)
- Blood/Disease Exposure (tattoo, piercings, accidental needle stick)
- High Risk Behavior—Sexual (MSM, sex with IV drug-user or test-positive individual)
- High Risk Behavior—Non-Sexual (IV drug use, non-sexual exposure to Hepatitis C or Hepatitis B.

All interviews will be digitally-recorded and the recordings uploaded onto computers as dss files; these files will be transcribed and then coupled to the interviewer notes to form an analytic package for the data analysts. Once the interview is conducted successfully, each study donor will be mailed a check of $25 as an incentive for participating in the study.

The cognitive testing of the interview guide will be conducted at the Hoxworth Blood Center and at the Coordinating Center. For this purpose, the blood center staff will identify 2 PDI and 2 deferred donors from the five broad categories of interest. They will also contact 2 accepted donors for study consent and interview. These donors will be approached and consented by following the same procedures that will be used for the actual study.

The data from the semi-structured interviews will be analyzed in two ways. The close-ended responses will be analyzed quantitatively. This will likely take the form of 3-way cross-tabulations of frequency distributions in responses to key questions. The open-ended responses will be analyzed as qualitative data. All analytic steps and assumptions that led up to the conclusions, including competing interpretations of the data, will be fully discussed in the final report.

Frequency of Response: Once. *Affected Public: Individuals. Type of Respondents:* Adult blood donors. The annual reporting burden is a follows: *Estimated Number of Respondents:* 408; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.08 for the initial phone call and 0.5 for responding to the actual interview; and *Estimated Total Annual Burden Hours Requested:* 83.64. *The annualized cost to respondents is estimated at:* $1505.52 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Table 1: Estimate of Requested Burden Hours and Dollar Value of Burden Hours

TABLE A.12–1 ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Donors initially contacted	408	1	.08	32.6
PDI Donors	*60	1	0.5	30
Deferred Donors	*30	1	0.5	15

TABLE A.12–1 ESTIMATES OF HOUR BURDEN—Continued

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Accepted Donors	*12	1	0.5	6
Total	408			83.64

*These respondents are a subgroup of total 408 donors who will be initially contacted to participate in the study.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 9144, 6701 Rockledge Drive, Bethesda, MD 20892–7950, or call 301–435–0075, or E-mail your request to *nemog@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 16, 2010.

George Nemo,

NHLBI Project Officer, NHLBI, National Institutes of Health.

[FR Doc. 2010–3449 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0585]

Patrick J. Lais: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Patrick J. Lais from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Mr. Lais was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Lais has notified FDA that he acquiesces to debarment, and therefore has waived his opportunity for a hearing concerning this action.

DATES: This order is effective February 23, 2010.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

I. Background

On April 25, 2005, Mr. Patrick J. Lais, formerly president of York Pharmaceutical, pleaded guilty to introducing and delivering, and causing to be introduced and delivered into interstate commerce, a drug that was adulterated within the meaning of 21 U.S.C. 351(a)(2)(B) of the act, a felony under Federal law in violation of 21 U.S.C. 331(a) and 333(a)(2). Judgment was entered against him for this felony on August 15, 2005. The basis for this conviction was as follows:

Beginning in 1997 and lasting until September 2001, Mr. Lais was the president of York Pharmaceutical (York). Mr. Lais had responsibility for and authority over drug manufacturing at York. York manufactured generic over-the-counter drugs during the period January 1999 through July 2001.

York distributed in interstate commerce human drug products that were adulterated within the meaning of 21 U.S.C. 351(a)(2)(B) of the act, in that York manufactured and distributed, among other things, subpotent burn spray, aspirin that had failed dissolution testing, and antacid products contaminated with bacteria.

Mr. Lais knew that York's manufacturing facility lacked basic validation processes and controls and that York's drug products were adulterated within the meaning of the act. Mr. Lais also knew that York: (1) Did not use procedures that ensured that its drugs had the identity, strength, quality, and purity characteristics that they were represented to possess; (2) did not test raw materials before using them; (3) did not perform appropriate laboratory determinations of conformance with final specifications for each of its drug products; (4) shipped drug product known not to meet established quality control criteria; (5) frequently failed to assess the stability characteristics of the drugs it produced; (6) did not maintain the buildings used in the manufacture, processing, packing, and holding of its drug products in a clean and sanitary condition; and (7) did not clean, maintain, and sanitize its manufacturing equipment and utensils in such a way as to prevent contamination of final drug products.

In January 2000, York manufactured and compressed a drug product identified as "Uncoated Aspirin." This drug failed its final dissolution testing. Neither Mr. Lais nor the employees under his authority and control determined the cause of the dissolution failure. Rather, York coated the failed aspirin and renumbered the lot. Part of this lot then was packaged as "Coated Aspirin." On or about February 21, 2000, Mr. Lais caused the shipment of 625 cases of adulterated drug products, identified as "Coated Aspirin," to customers in Kansas City, MO. In May 2000, this "Coated Aspirin" failed 3–month stability testing. Mr. Lais and the employees under his authority and control did not determine the cause of the failure and did not inform York's customers that the aspirin was adulterated.

Mr. Lais is subject to debarment based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 355a(a)(2)(B)), that he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

In the plea agreement entered on April 25, 2005, Mr. Lais expressly waived his right, if any, to contest any debarment that may be initiated by the Secretary of Health and Human Services under 21 U.S.C.335a. In accordance with section 306(c)(2)(B) of the act, Mr. Lais notified FDA of his acquiescence to debarment in a letter signed on October 3, 2006. A person subject to debarment is entitled to an opportunity for an agency hearing on disputed issues of material fact under section 306(i) of the act, but by acquiescing to debarment Mr. Lais waived his opportunity for a hearing and to raise any contentions concerning his debarment.

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the act, under authority delegated to the Acting Director (Staff Manual Guide 1410.35), finds that Patrick J. Lais has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding and based on his notification of acquiescence, Mr. Lais is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 3, 2006, the date of notification of acquiescence (see sections 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Patrick J. Lais, in any capacity during Mr. Lais's debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Lais provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Lais during his period of debarment (section 306(c)(1)(B) of the act).

Any application by Mr. Lais for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2009–N–0585 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 26, 2010.

Brenda Holman,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2010–3552 Filed 2–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Automated Computer-Aided Polyp Detection for Computed Tomography Colonography (Virtual Colonoscopy)

Description of Invention: This invention describes an automated method for colon registration from supine and prone scans that combines the use of Computed Tomographic Colonography (CTC) and Computer Aided Detection (CAD) software. Currently, in order to detect colonic polyps, patients are scanned twice—once in the supine, and again in the prone positions. This approach improves CTC sensitivity by reducing the extent of non-interpretable collapsed or fluid-filled segments. In order to assist radiologists in interpreting CTC data or evaluating colonic polyp candidates detected by CAD in both scans, it is important to provide not only the locations of suspicious polyps, but also the possible matched pairs (correspondences) of polyps in these scans. To achieve this, the two scans need to be aligned. In this invention, the colon registration problem is formulated as time series matching along the centerline of the colon. Anatomically salient points on the colon are initially distinguished as they can be viewed as landmarks along the central path of the colon. Correlation optimized warping is then applied to the segments defined by the anatomical landmarks to find better global registration based on the local correlation of segments.

When CTC is performed in conjunction with CAD software, screening may become easier on patients, less time-consuming, and more accurate. The effectiveness of the method was verified in experiments in which the polyp location was used as a measure for the registration error. The algorithm was tested on a CTC dataset of 12 patients with 14 polyps. Experimental results showed that by using this method, the estimation error of polyp location could be reduced 60.4% (from 47.2mm to18.7mm on average) compared to a traditional method based on dynamic time warping.

Colon cancer is the second leading cause of cancer-related deaths in the United States, and the method used in this invention will aid in effective early detection of the disease, which will have a significant impact on its prognosis.

Applications: Efficient and robust detection of colon cancer.

Development Status: Early stage.

Inventors: Ronald M. Summers *et al.* (NIHCC).

Related Publication: Huang A, Roy D, Franaszek M, Summers RM. Teniae coli guided navigation and registration for virtual colonoscopy. Visualization, 2005. VIS 05. IEEE, pp. 279–285, 23–28 Oct 2005; doi 10.1109/VISUAL.2005.1532806.

Patent Status: U.S. Patent Application No. 61/220,481 filed June 25, 2009 (HHS Reference No. E–135–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, Ph.D.; 301–435–5474; *jeffreyja@mail.nih.gov.*

Alpha 1-3 N-Acetylgalactosaminyltransferases With Altered Donor and Acceptor Specificities, Compositions, and Methods of Use: Development of Pharmaceutical Agents and Improved Vaccines

Description of Invention: The present invention relates to the field of glycobiology, specifically to glycosyltransferases. The present invention provides structure-based design of novel glycosyltransferases and their biological applications.

The structural information of glycosyltransferases has revealed that the specificity of the sugar donor in these enzymes is determined by a few residues in the sugar-nucleotide binding pocket of the enzyme, which is conserved among the family members from different species. This conservation has made it possible to reengineer the existing glycosyltransferases with broader sugar donor specificities. Mutation of these residues generates novel glycosyltransferases that can transfer a sugar residue with a chemically reactive functional group to N-acetylglucosarnine (GlcNAc), galactose (Gal) and xylose residues of glycoproteins, glycolipids and proteoglycans (glycoconjugates). Thus, there is potential to develop mutant glycosyltransferases to produce glycoconjugates carrying sugar moieties with reactive groups that can be used in the assembly of bio-nanoparticles to develop targeted-drug delivery systems or contrast agents for medical uses.

Accordingly, methods to synthesize N-acetylglucosamine linkages have many applications in research and medicine, including in the development of pharmaceutical agents and improved vaccines that can be used to treat disease.

This application claims compositions and methods based on the structure-based design of alpha 1–3 N-Acetylgalactosaminyltransferase (alpha 3 GalNAc-T) mutants from alpha l-3galactosyltransferase (a3Gal-T) that can transfer 2′-modified galactose from the corresponding UDP-derivatives due to mutations that broaden the alpha 3Gal-T donor specificity and make the enzyme alpha3 GalNAc-T.

Applications: Development of pharmaceutical agents and improved vaccines.

Development Status: Enzymes have been synthesized and preclinical studies have been performed.

Inventors: Pradman Qasba, Boopathy Ramakrishnan, Elizabeth Boeggeman, Marta Pasek (NCI).

Patent Status: PCT Application No. PCT/US2007/018678 filed August 22, 2007, which published as WO 2009/025646 on February 26, 2009 (HHS Reference No. E–279–2007/0–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: John Stansberry, PhD; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize structure-based design of novel glycosyltransferases. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Beta 1,4–Galactosyltransferases With Altered Donor and Acceptor Specificities, Compositions and Methods of Use: Development of Pharmaceuticals and Improved Vaccines

Description of Invention: The present invention relates to the field of glycobiology, specifically to glycosyltransferases. The present invention provides structure-based design of novel glycosyltransferases and their biological applications.

The structural information of glycosyltransferases has revealed that the specificity of the sugar donor in these enzymes is determined by a few residues in the sugar-nucleotide binding pocket of the enzyme, which is conserved among the family members from different species. This conservation has made it possible to reengineer the existing glycosyltransferases with broader sugar donor specificities. Mutation of these residues generates novel glycosyltransferases that can transfer a sugar residue with a chemically reactive functional group to N-acetylglucosarnine (GlcNAc), galactose (Gal) and xylose residues of glycoproteins, glycolipids and proteoglycans (glycoconjugates). Thus, there is potential to develop mutant glycosyltransferases to produce glycoconjugates carrying sugar moieties with reactive groups that can be used in the assembly of bio-nanoparticles to develop targeted-drug delivery systems or contrast agents for medical uses.

Accordingly, methods to synthesize N-acetylglucosamine linkages have many applications in research and medicine, including in the development of pharmaceutical agents and improved vaccines that can be used to treat disease.

The invention claims beta (1,4)-galactosyltransferase I mutants having altered donor and acceptor and metal ion specificities, and methods of use thereof. In addition, the invention claims methods for synthesizing oligosaccharides using the beta (1,4)-galactosyltransferase I mutants and to using the beta (1,4)-galactosyltransferase I mutants to conjugate agents, such as therapeutic agents or diagnostic agents, to acceptor molecules. More specifically, the invention claims a double mutant beta 1, 4 galactosyltransferase, human beta-1, 4-Tyr289Leu-Met344His-Gal-T1, constructed from the individual mutants, Tyr289Leu-Gal-T1 and Met344His-Gal-T1, that transfers modified galactose in the presence of magnesium ion, in contrast to the wild-type enzyme which requires manganese ion.

Application: Development of pharmaceutical agents and improved vaccines.

Development Status: Enzymes have been synthesized and preclinical studies have been performed.

Inventors: Pradman Qasba, Boopathy Ramakrishnan, Elizabeth Boeggeman (NCI).

Patent Status: PCT Application No. PCT/US2007/018656 filed August 22, 2007, which published as WO 2009/025645 on February 26, 2009 (HHS Reference No. E–280–2007/0–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: John Stansberry, PhD; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize glycosyltransferases. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: February 4, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–3450 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK KUH–K–Application Review SEP.

Date: March 19, 2010.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, TeenLABS Ancillary Studies.

Date: March 22, 2010.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3451 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, DTPA—Radionuclide Decorporation C2 (60).

Date: March 4, 2010.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–451–2676. *ebuczko1@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Oral Radionuclide Decorporation Agents C1 (51).

Date: March 5, 2010.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–451–2676. *ebuczko1@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 17, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3453 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Special Emphasis Panel to Review NIDCR EUREKA Applications (RFA–GM–10–009).

Date: March 26, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Wagenaar Miller, Ph.D., Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research National Institutes of Health, 6701 Democracy, Rm 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3455 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Barrett's Esophagus.

Date: March 12, 2010.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary R01 Application Review.

Date: March 19, 2010.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3456 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Program Project in Cardiac Fibrillation.

Date: March 2, 2010.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725 *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Randomized Evaluation of VAD InterVEntion before Inotropic Therapy (REVIVE–IT)

Date: March 3, 2010.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, PhD, MD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3457 Filed 2–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Guidelines for Human Stem Cell Research

SUMMARY: The National Institutes of Health (NIH) is requesting public comment on a revision to the definition of human embryonic stem cells (hESCs) in the "National Institutes of Health Guidelines for Human Stem Cell Research" (Guidelines).

On July 7, 2009, NIH issued Guidelines (*http://edocket.access.gpo.gov/2009/pdf/E9-15954.pdf*) to implement Executive Order 13505, as it pertains to NIH-funded stem cell research, to establish policy and procedures under which the NIH will fund such research, and help ensure that NIH-funded research in this area is ethically responsible, scientifically worthy, and conducted in accordance with applicable law.

In Section II of the final Guidelines, hESCs are defined as: "For the purpose of these Guidelines, 'human embryonic stem cells (hESCs)' are cells that are derived from the inner cell mass of blastocyst stage human embryos, are capable of dividing without differentiating for a prolonged period in culture, and are known to develop into cells and tissues of the three primary germ layers."

This definition had the unintended consequence of excluding certain hESCs which may otherwise be appropriate for Federal funding. For example, the current definition excludes hESCs from an embryo which fails to develop to the blastocyst stage.

Therefore, the NIH proposes replacing the current definition of hESCs in Section II with the following: "For the purpose of these Guidelines, 'human embryonic stem cells (hESCs)' are pluripotent cells that are derived from

early stage human embryos, up to and including the blastocyst stage, are capable of dividing without differentiating for a prolonged period in culture, and are known to develop into cells and tissues of the three primary germ layers."

This proposed change in no way alters the rigorous ethical standards set forth in the Guidelines.

DATES: Written comments on this proposed change must be received by NIH on or before March 25, 2010 in order to be considered.

ADDRESSES: Public comments may be may be entered at: *http://hescregapp.od.nih.gov/comments/add.htm.*

Comments may also be mailed to: NIH Stem Cell Guidelines, MSC 7997, 9000 Rockville Pike, Bethesda, Maryland 20892–7997. Comments will be made publicly available. Personally identifiable information (except for organizational affiliations) will be removed prior to making comments publicly available.

Dated: February 16, 2010.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2010–3527 Filed 2–19–10; 4:15 pm]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0085]

Preventive Controls for Fresh Produce; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the opening of a docket to obtain information about current practices and conditions for the production and packing of fresh produce. FDA is establishing this docket in order to provide an opportunity for interested parties to provide information and share views that will inform the development of safety standards for fresh produce at the farm and packing house and strategies and cooperative efforts to ensure compliance.

DATES: Submit electronic or written comments by May 24, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2024.

SUPPLEMENTARY INFORMATION:

I. Background

On March 19, 2009, President Barack Obama established a new Food Safety Working Group (FSWG), chaired by the Secretaries of the Department of Health and Human Services and the Department of Agriculture. In announcing creation of the FSWG, the President said the group would advise him on how to upgrade U.S. food safety laws for the 21st century, foster coordination of food safety efforts throughout the Government, and ensure laws are being adequately enforced to keep the American people safe from foodborne illness (Ref. 1).

On July 1, 2009, the FSWG recommended a new public health-focused approach to food safety based on three core principles: (1) Prioritizing prevention; (2) strengthening surveillance and enforcement; and (3) improving response and recovery (Ref. 1). The FSWG announced steps to be taken by FDA and other Federal agencies to achieve these goals.

With regard to fresh produce, the FSWG announced that FDA would issue "commodity-specific draft guidance on preventive controls that industry can implement to reduce the risk of microbial contamination in the production and distribution of tomatoes, melons, and leafy greens" (Ref. 1). The FSWG also announced that FDA, over the next 2 years, would "seek public comment and work to require adoption of these approaches through regulation" (Ref. 1).

On August 3, 2009, FDA made available draft guidances to industry for leafy greens, melons, and tomatoes (Refs. 3 through 5). FDA is now establishing a docket in order to provide an opportunity for interested parties to provide information and share views that will inform the development of: (1) Safety standards for fresh produce at the farm and packing house and (2) strategies and cooperative efforts to ensure compliance.

II. Request for Comments and Information

We are requesting comments that will inform the development of: (1) Safety standards for fresh produce at the farm and packing house and (2) strategies and cooperative efforts to ensure compliance. In particular, we welcome input on any of these general categories:

- Role of the good agricultural practice guidelines entitled "Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables" (GAPs Guide, Ref. 6);
- Standards for domestic and foreign growers and packers;
- Identification and prioritization of risk factors;
- Environmental assessment of hazards and possible pathways of contamination;
- The impact of scale of growing operations on the nature and degree of possible food safety hazards;
- Methods to tailor preventive controls to particular hazards and conditions affecting an operation;
- Possible approaches to tailoring preventive controls to the scale of an operation so that the controls achieve an appropriate level of food safety protection and are feasible for a wide range of large and small operations;
- Coordination of produce food safety practices and sustainable and/or organic production methods;
- Coordination of produce food safety practices and environmental and/or conservation goals or practices;
- Coordination of produce food safety practices and Federal, State, local and tribal government statutes and regulations;
- Microbial testing;
- Post-harvest operations and the role of the current good manufacturing practices in 21 CFR part 110;
- Records and other documentation that would be useful to industry and regulators in ensuring the safety of fresh produce; and
- Strategies to enhance compliance.

The agency will consider information submitted to the docket in developing safety standards for fresh produce. Comments previously submitted to the Division of Dockets Management for the following dockets will also be considered by FDA and do not need to be resubmitted:

- "Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes; Availability" (74 FR 38438, August 3, 2009; Docket No. FDA–2009–D–0346);
- "Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons" (74 FR 38437, August 3, 2009; Docket No. FDA–2009–D–0347);
- "Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens; Availability" (74 FR 38439, August 3, 2009; Docket No. FDA–2009–D–0348); and

• "Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables; Request for Comments and for Scientific Data and Information" (73 FR 51306, September 2, 2008; Docket No. FDA–2008–N–0455).

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this docket. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

FDA has placed the following references on display in FDA's Division of Dockets Management (see **ADDRESSES**). You may see them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. Food Safety Working Group, "Food Safety Working Group: Key Findings" (July 1, 2009), Available at *http://www.foodsafetyworkinggroup.gov/ContentKeyFindings/HomeKeyFindings.htm*, Accessed and printed on January 11, 2010.

2. Food Safety Working Group, "President's Food Safety Working Group: Delivering Results," Available at *http://www.foodsafetyworkinggroup.gov/FSWG_Fact_Sheet.pdf*, Accessed and printed on January 11, 2010.

3. FDA, "Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes; Availability" (74 FR 38438, August 3, 2009).

4. FDA, "Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons" (74 FR 38437, August 3, 2009).

5. FDA, "Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens; Availability" (74 FR 38439, August 3, 2009).

6. FDA, "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables," October 26, 1998, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ProduceandPlanProducts/ucm064574.htm*.

Dated: February 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3409 Filed 2–18–10; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0009]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on March 18, 2010, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Thursday, March 18, 2010, from 8:30 a.m. to 1 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the US Citizenship and Immigration Services Tomich Center, 111 Massachusetts Ave, NW., (corner of New Jersey Avenue) Washington, DC 20529. Written materials, requests to make oral presentations, and requests to have a copy of your materials distributed to each member of the Committee prior to the meeting should be sent to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by March 11, 2010. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2010–0009) and may be submitted by any *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2010–0009) in the subject line of the message.

• *Fax:* (703) 483–2999.

• *Mail:* Martha K. Landesberg, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions must include the words "Department of Homeland Security Data Privacy and Integrity Advisory Committee" and the Docket Number (DHS–2010–0009). Comments will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by e-mail to *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). During the meeting, the Chief Privacy Officer will provide the DHS Data Privacy and Integrity Advisory Committee an update on the activities of the DHS Privacy Office. The Committee will also hear presentations on the Department's cyber security efforts. In addition, the Committee's subcommittees will discuss their ongoing work. The agenda will be posted in advance of the meeting on the Committee's Web site at *http://www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

If you wish to attend the meeting, please plan to arrive at the Tomich Center by 8:15 a.m., to allow extra time to be processed through security, and bring a photo ID. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any. At the discretion of the Chair, members of the public may make brief (*i.e.,* no more than three minutes) oral presentations from 12 p.m. to 12:30 p.m. If you would like to make an oral presentation at the meeting, we request that you register in advance or sign up on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. If you wish to provide written materials to be distributed to each

member of the Committee in advance of the meeting, please submit them, preferably in electronic form to facilitate distribution, to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by March 11, 2010.

Information on Services for Individuals With Disabilities

For information on services for individuals with disabilities or to request special assistance, contact Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

Privacy Act Statement: DHS's Use of Your Information

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS Mailing and Other Lists System of Records Notice, DHS/ALL–002 (73 FR 71659).

DHS Authority to Collect This Information: DHS requests that you voluntarily submit this information under its following authorities: 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; FACA, 5 U.S.C. App. (Pub. L. 92–463); 5 U.S.C., App. 2 Sec. 10; E.O. 9397; 14 U.S.C. 632; The Omnibus Budget Reconciliation Act of 1987, Public Law 101–103, Section 9503(c), 101 Stat. 1330, 1330–381 (1987) (codified at 19 U.S.C. 2071 note).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 System of Records Notice referenced above.

Dated: February 17, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–3400 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0041]

Privacy Act of 1974; Department of Homeland Security/ALL—023 Personnel Security Management System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue Department of Homeland Security/ALL—023 Personnel Security Management System of Records to include record systems within the Federal Protective Service and records of federal, state, local and foreign law enforcement personnel who apply for and/or are granted authority to enforce federal laws on behalf of the Department. Categories of individuals, categories of records, purpose, and routine uses of this system have been reviewed and updated to reflect the personnel security management record systems of the Department, including the Federal Protective Service. The activities performed by the Department's personnel security program often overlap with other security-related activities such as access control and investigatory records. Accordingly, data within each of the categories of individuals, categories of records, purpose and routine uses may have similarities with other security-related systems of records, but each system is distinct based on its purpose.

Further, this system of records is separate from Department of Homeland Security/ALL 026—Personal Identity Verification Management System of Records, June 25, 2009, which supports the administration of the Homeland Security Presidential Directive—12 program, directing the use of a common identification credential for both logical and physical access to federally controlled facilities and information systems while enhancing security, increasing efficiency, reducing identity fraud, and protecting personal privacy.

There will be no change to the Privacy Act exemptions currently in place for this system of records and therefore remain in effect. This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before March 25, 2010. This updated system will be effective March 25, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0041 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) and its components and offices rely on DHS/ALL—023 Personnel Security Management System of Records (74 FR 3084, January 16, 2009) for the collection and maintenance of records that pertain to personnel security management.

DHS is updating and reissuing this Department-wide system of records under the Privacy Act (5 U.S.C. 552a), for DHS personnel security management records, to include records systems within the Federal Protective Service (FPS) and records of federal, state, local, and foreign law enforcement personnel

who apply for and/or are granted authority to enforce federal laws on behalf of DHS. The DHS/ALL—023 Personnel Security Management System of Records is the baseline system for personnel security activities, as led by the DHS Office of the Chief Security Officer, for the Department. This will ensure that all DHS components follow the same privacy rules for collecting and handling personnel security management records.

The purpose of this system is to maintain processing records of personnel security-related clearance actions, to record suitability determinations, to record whether security clearances are issued or denied, and to verify eligibility for access to classified information or assignment to a sensitive position. Also, records may be used by the Department for adverse personnel actions such as removal from sensitive duties, removal from employment, and denial to a restricted or sensitive area, and revocation of security clearance. The system also assists in capturing background investigations and adjudications; directing the clearance process for granting, suspending, revoking and denying access to classified information; directing the clearance process for granting, suspending, revoking and denying other federal, state, local, or foreign law enforcement officers the authority to enforce federal laws on behalf of DHS; managing state, local, and private-sector clearance programs and contractor suitability programs; determining eligibility for unescorted access to DHS facilities or information technology systems; and other activities relating to personnel security management responsibilities at DHS. The Department's authority for this collection is primarily 5 U.S.C. 301; 44 U.S.C. 3101; 8 U.S.C. 1357(g); 19 U.S.C. 1401(i); Executive Order (EO) 9397; EO 10450; EO 12968; 5 CFR part 731; 5 CFR part 732; 5 CFR part 736; 32 CFR part 147; and DCID 6/4. This system will collect individuals' personal information to support the Department's efforts related to their personnel security activity. Efforts have been made to safeguard records in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The routine uses posted are unchanged from the previous publishing and consistent with the purpose for collection. This system of records is collecting information under the Paperwork Reduction Act using the following forms: (1.) Questionnaire for Non-Sensitive Positions—SF–85—OMB No. 3206–0005; (2.) Questionnaire for Public Trust Position—SF–85P—OMB No. 3206–0191; (3.) Supplemental Questionnaire for Selected Positions—SF–85P–S OMB No. 3206–0191; (4.) Questionnaire for National Security Positions—SF–86—OMB No. 3206–0005; and (5.) Continuation Sheet for Questionnaires—SF–86A—OMB No. 3206–0005. Further reviews are being conducted to determine if the system of records collects other information under the Paperwork Reduction Act. Categories of individuals, categories of records, the purpose, and routine uses of this system have been reviewed and updated to reflect the personnel security management record systems of the Department, including the FPS. The Privacy Office has updated the categories of individuals covered by the system to include DHS-covered individuals, such as federal employees, applicants, excepted service federal employees, contractor employees, retired employees, past employees providing support to DHS and who require unescorted access to DHS-secured facilities, and federal, state, local, and foreign law enforcement personnel who apply for or are granted authority to enforce federal laws on behalf of DHS. The categories of records have been updated to include facial photographs and criminal background investigations. The purpose has been revised to reflect that the system assists in directing the clearance process for granting, suspending, revoking and denying other federal, state, local, or foreign law enforcement officers the authority to enforce federal laws on behalf of DHS and eligibility for unescorted access to DHS secured facilities. An existing routine use (Routine Use H) was modified to permit the sharing of information from this system of records with agencies where it is relevant and necessary to the agencies' decision concerning the delegation or designation of authority. Lastly, a new routine use was added to permit sharing of information with the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Privacy Impact Assessments (PIAs) have been conducted and are on file for the (1.) Personnel Security Activities Management System; (2.) Integrated Security Management System; (3.) DHSAccessGate System; (4.) Automated Continuing Evaluation System (ACES) Pilot; (5.) Personal Identity Verification System; (6.) Federal Protective Service Information Support Tracking System (FISTS) Contract Suitability Module; and (7.) Federal Protective Service Dispatch Incident Records Management Systems along with other related component specific PIAs and can be found at *http://www.dhs.gov/privacy.*

Consistent with DHS's information sharing mission, information stored within the DHS/ALL—023 Personnel Security Management System of Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The Office of the Chief Security Officer is implementing a new web-based personnel and information security application, Integrated Security Management System (ISMS). ISMS has replaced many of the existing case management systems currently in use at the Department's Headquarters, U.S. Customs and Border Protection (CBP), the Federal Law Enforcement Training Center (FLETC), and the Federal Emergency Management Agency (FEMA). ISMS will replace the existing case management systems currently in use at the U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Coast Guard (USCG) in the near future.

There will be no change to the Privacy Act exemptions currently in place for this system of records and therefore remain in effect. This updated system will continue to be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates an individual's records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is stored and retrieved by the name of the individual or by some identifying number such as property address, mailing address, or symbol assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. DHS extends administrative Privacy Act protections to all individuals where information is maintained on both U.S. citizens, lawful permanent residents, and visitors. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is a description of DHS/ALL—023 Personnel Security Management System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

System of Records

DHS/ALL–023

SYSTEM NAME:

Department of Homeland Security (DHS)/ALL—023 Personnel Security Management System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, for official use only, and classified.

SYSTEM LOCATION:

Records are maintained at several DHS Headquarters locations and component offices in Washington, DC and field locations; and the Department of Treasury (DTR), Bureau of Public Debt for Office of Inspector General employees and applicants. For background investigations adjudicated by the Office of Personnel Management (OPM), OPM may retain copies of those files pursuant to their records retention schedules.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include federal employees, applicants, excepted service federal employees, contractor employees, retired employees, and past employees providing support to DHS who require: (1.) Unescorted access to DHS-owned facilities, DHS-controlled facilities, DHS-secured facilities, or commercial facilities operating on behalf of DHS; (2.) access to DHS information technology (IT) systems and the systems' data; or (3.) access to national security information including classified information.

Also covered are: (1.) State and local government personnel and private-sector individuals who serve on an advisory committee or board sponsored by DHS; (2.) federal, state, local, and foreign law enforcement personnel who apply for or are granted authority to enforce federal laws on behalf of DHS; and (3.) individuals, including state and local government personnel and private-sector individuals, who are authorized by DHS to access Departmental facilities, communications security equipment, and/or information technology systems that process sensitive or classified national security information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

- Individual's name;
- Date and place of birth;
- Social security number;
- Citizenship;
- Access Control Pass or Credential number;
- Facial photograph;
- Records relating to the management and operation of DHS personnel security program, including but not limited to:
  - Completed standard form questionnaires issued by the Office of Personnel Management;
  - Originals or copies of background investigative reports;
  - Supporting documentation related to the background investigations and adjudications including criminal background, medical and financial data;
  - Information related to congressional inquiry; and
  - Other information relating to an individual's eligibility for access to classified or sensitive information.
- Records relating to management and operation of DHS programs to safeguard classified and sensitive but unclassified information, including but not limited to:
  - Document control registries;
  - Courier authorization requests;
  - Non-disclosure agreements;
  - Records of security violations;
  - Records of document transmittals; and
  - Requests for secure storage and communications equipment.
- Records relating to the management and operation of DHS special security programs, including but not limited to:
  - Requests for access to sensitive compartmented information (SCI);
  - Contact with foreign officials and foreign travel registries; and
  - Briefing/debriefing statements for special programs, sensitive positions, and other related information and documents required in connection with personnel security clearance determinations.
- Records relating to the management and operation of the DHS security program, including but not limited to:
  - Inquiries relating to suspected security violation(s);
  - Recommended remedial actions for possible security violation(s);
  - Reports of investigation regarding security violations;
  - Statements of individuals;
  - Affidavits;
  - Correspondence;
  - Documentation pertaining to investigative or analytical efforts by DHS Security program personnel to identify threats to DHS personnel, property, facilities, and information; and
  - Intelligence reports and database results relating to DHS personnel, applicants, or candidates for DHS employment or access to DHS facilities or information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 8 U.S.C. 1357(g); 19 U.S.C. 1401(i); Executive Order (EO) 9397; EO 10450; EO 12968; 5 CFR part 731; 5 CFR part 732; 5 CFR part 736; 32 CFR part 147; and DCID 6/4.

PURPOSE(S):

The purpose of this system is to collect and maintain records of processing of personnel security-related clearance actions, to record suitability determinations, to record whether security clearances are issued or denied, and to verify eligibility for access to classified information or assignment to a sensitive position. Also, records may be used by the Department for adverse

personnel actions such as removal from sensitive duties, removal from employment, denial to a restricted or sensitive area, and/or revocation of security clearance. The system also assists in capturing background investigations and adjudications; directing the clearance process for granting, suspending, revoking and denying access to classified information; directing the clearance process for granting, suspending, revoking and denying other federal, state, local, or foreign law enforcement officers the authority to enforce federal laws on behalf of DHS; managing state, local and private-sector clearance programs and contractor suitability programs; determining eligibility for unescorted access to DHS owned, occupied or secured facilities or information technology systems; and/or other activities relating to personnel security management responsibilities at DHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the written request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, delegation or designation of authority, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, delegation or designation of authority, or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To an individual's prospective or current employer to the extent necessary to determine employment eligibility.

J. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or pursuant to the order of a court of competent jurisdiction in response to a subpoena from a court of competent jurisdiction.

K. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

L. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure

facilities in a locked drawer behind a locked door. The records are stored on servers, magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by individual's name, date of birth, social security number, if applicable, or other unique individual identifier such as access control pass or credential number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Pursuant to GRS 18, Item 21 through 25, records relating to alleged security violations are destroyed two years after completion of final action or when no longer needed, whichever is sooner; records relating to alleged violations of a sufficient serious nature that are referred for prosecutive determinations are destroyed five years after the close of the case; personnel security clearance files are destroyed upon notification of death or not later than five years after separation or transfer of employee or no later than five years after contract relationship expires, whichever is applicable.

SYSTEM MANAGER AND ADDRESS:

For Headquarters components of DHS: Chief, Personnel Security Division (202–447–5010), Office of Security, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under "contacts."

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are generated from sources contacted during personnel and background investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(1), (k)(2), (k)(3), and (k)(5) of the Privacy Act.

Dated: February 1, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–3362 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0040]

Privacy Act of 1974; Department of Homeland Security/ALL—027 The History of the Department of Homeland Security System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue a Department-wide system of records notice titled, Department of Homeland Security–2004–0004 Oral History Program: The History of the Department of Homeland Security System of Records. The updated system of records is being renamed Department of Homeland Security/ALL–027 The History of the Department of Homeland Security System of Records and will consist of information that is created and used by the Department's Historian, and component historians. As a result of the biennial review of this system, updates have been made reflecting a new name to better describe records covered; added system classification of classified, sensitive, and unclassified information; system location to reflect the move of the History Office from the Office of Public Affairs to the Office of Policy; expanded categories of individuals and the categories of records covered by the system to include those used by components, as the Department proposes that this be a Department-wide system; routine uses to better reflect the needs of the History Office including sharing with appropriate agencies, entities, and persons when there is a compromise or risk to the system (Routine Use D), to federal, state, tribal, local, international, or foreign law

enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order (Routine Use F), to audiences attending a particular event, location, or meeting where the history of the Department is exhibited or presented (Routine Use I), and to scholars (historians and other disciplines) or any other interested individuals for research in writing dissertations, articles, books, and other documents for government, commercial, and nonprofit publication or developing material for other media use (Routine Use J); storage, retrievability and safeguards to reflect changes made by the Office transfer; retention and disposal to manage new records added to the system as the Department proposes that this be a Department-wide system; record source categories to reflect that individuals who are interviewed for records must sign and are provided a notice under the Privacy Act pursuant to 5 U.S.C. 552a; and added exemptions necessary for records within the Department's history files, that will be reviewed, on a case by case basis, for exemption from the Privacy Act. The system will allow the Department's Historian, and component historians, to store and retrieve information pertaining to Department employees and former employees, including political appointees, civilian and military personnel assigned or detailed to the Department, individuals who are formally or informally associated with the Department, including advisory committee members, employees of other agencies and departments in the federal government, and other individuals in the private and public sector who contribute to the history of the Department. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 25, 2010. This reissued system will be effective March 25, 2010.

ADDRESSES: You may submit comments, identified by docket number [DHS–2009–0040] by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Historian (202–282–8682), History Office, Office of Policy, U.S. Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) and its components and offices rely on the Privacy Act system of records notice, DHS–2004–0004 Oral History Program: The History of the Department of Homeland Security System of Records (69 FR 56781, September 22, 2004) for the collection and maintenance of records that concern the Department's history records. The system name is being changed to DHS/ALL–027 The History of the Department of Homeland Security System of Records.

As part of its efforts to maintain its Privacy Act records systems, DHS is updating and reissuing a Department-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS history records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling history records. The collection and maintenance of this information will assist DHS in managing the Department's history records in order to promote an accurate and complete portrayal of DHS history.

The History Office was established to record, collect, preserve, describe, analyze, publish, and disseminate the history of the Department. Initially established within the Office of Public Affairs, the History Office has since been transferred to the Office of Policy, and serves with the support of the components, in developing a complete history of the Department.

The purpose of this system is to collect historically relevant information about the Department to support policy, initiatives, announcements, public releases of information, as well as to inform current and future leadership, employees, and the public about the history of the Department. DHS is authorized to implement this program primarily through 5 U.S.C. 301 and 44 U.S.C. 3101. This system has an effect on individuals' privacy that is balanced by the notice provided to the individual during an oral interview, while completing historical questionnaires, or when providing information. This information is needed to accurately capture and maintain the Department's history. Information is safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Information within this system is shared consistent with 5 U.S.C. 552a(b) of the Privacy Act and the compatibility requirements outlined in 5 U.S.C. 552a(7). Routine uses added during this biennial review are sharing with appropriate agencies, entities, and persons when there is a compromise or risk to the system (Routine Use D), to federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order (Routine Use F); to audiences attending a particular event, location, or meeting where the history of the Department is exhibited or presented (Routine Use I); and to scholars (historians and other disciplines) or any other interested individuals for research in writing dissertations, articles, books, and other documents for government, commercial, and nonprofit publication or developing material for other media use (Routine Use J). All remaining routine uses are as previously published. This system does use a form(s) to collect information. An inventory of forms is being conducted to ensure that appropriate Privacy Act notices are in place and that the Paperwork Reduction Act is being honored.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of

policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL–027 The History of the Department of Homeland Security System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records:

DHS/ALL–027

SYSTEM NAME:

Department of Homeland Security—The History of the Department of Homeland Security System of Records.

SECURITY CLASSIFICATION:

Classified, sensitive, and unclassified.

SYSTEM LOCATION:

Records are maintained at Department of Homeland Security headquarters (History Office, Office of Policy) as well as component headquarters in Washington, DC, and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: Current and former federal employees, including political appointees, civilian, contractor, and military personnel assigned or detailed to the Department. Also, covered by this system are individuals who are formally or informally associated with the Department, including advisory committee members, employees of other agencies and departments in the federal government, and other individuals in the private and public sector who contribute to the history of the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individuals or interviewees full name;
- Individuals or interviewees provided address;
- Individuals or interviewees provided phone number(s);
- Individuals or interviewees provided e-mail address;
- Occupational background and position(s);
- Public speeches and articles by an individual;
- Public and internal correspondence, interviews, press releases and announcements, and various other tapes and transcripts of Departmental activities;
- Photographs;
- Biographical information;
- Interview records on magnetic tape or other electronic format;
- Transcriptions from written and oral interviews and discussions;
- Access agreements; and
- Interviewee accounts and recollections of experiences at component legacy agencies; the events of September 11, 2001; the establishment of the Department and its predecessor the Office of Homeland Security; the history of the Department including legacy components; major issues facing the Department; and the future of the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; and 44 U.S.C. 3101.

PURPOSE(S):

The purpose of this system is to collect historically relevant information about the Department to support policy, initiatives, announcements, public releases of information, as well as to inform current and future leadership, employees, and the public about the history of the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individuals that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

E. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

F. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or

implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

G. To the Government Printing Office or other publishing offices for production of a final document.

H. To the National Archives and other government or public libraries in order to respond to inquiries about DHS.

I. To audiences attending a particular event, location, or meeting where the history of the Department is exhibited or presented.

J. To scholars (historians and other disciplines) or any other interested individuals for research in writing dissertations, articles, books, and other documents for government, commercial, and nonprofit publication or developing material for other media use.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name, subject, employment position, or event.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records relating to background material are temporary, to be destroyed when no longer needed for administrative purposes, or ten years after the completion of the project. Records for the Headquarters History Office Project Files and Oral History Program are permanent in accordance with National Archives and Records Administration through approved schedule N1–563–07–3.

SYSTEM MANAGER AND ADDRESS:

Historian (202–282–8682), History Office, Office of Policy, U.S. Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, interviewees, press releases, newspapers, journals, copies of internal Department records, and individuals submit records on a voluntary basis to the History Offices. Individuals who are interviewed for records must sign and are provided a notice under the Privacy Act pursuant to 5 U.S.C. 552a.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(5), and (e)(8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

Dated: February 1, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–3402 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0140]

Privacy Act of 1974; Department of Homeland Security Transportation Security Administration—023 Workplace Violence Prevention Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to establish a new system of records titled, "Department of Homeland Security/Transportation Security Administration—023 Workplace Violence Prevention Program System of Records." This system will allow the Transportation Security Administration to collect and maintain records on their Workplace Violence Prevention Program. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 25, 2010. This new system will be effective March 25, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0140 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*.Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC. 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Peter Pietra (*tsaprivacy@dhs.gov*), Director, Privacy Policy & Compliance, TSA–036, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6036. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) Transportation Security Administration (TSA) is establishing a new system of records under the Privacy Act (5 U.S.C. 552a) titled, DHS/TSA–023 Workplace Violence Prevention Program System of Records. The system will cover records regarding current and former employees and contractors of TSA and members of the public who have been involved in workplace violence at TSA facilities, or while on or because of their official duty, or who are being or have been assisted or counseled by the TSA Workplace Violence Prevention Program. Records include acts, remarks, or gestures that communicate a threat of harm or otherwise cause concern for the safety of any individual at TSA facilities or while on or because of their official duty. These records may include identifying information, information documenting workplace violence, and actions taken by the Workplace Violence Prevention Program or TSA. The program provides oversight and management of potential or actual incidents of violence in the workplace. It provides assistance to affected individuals, guidance on prevention and response to workplace violence, analyzes data as needed, and provides training.

Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this system of records elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the DHS/TSA–023 Workplace Violence Prevention Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to the Congress.

SYSTEM OF RECORDS:

DHS/TSA–023

SYSTEM NAME:

Transportation Security Administration Workplace Violence Prevention Program System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at TSA Headquarters in Arlington, Virginia and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: Current and former employees and contractors of TSA and members of the public who have been involved in workplace violence at TSA facilities, or while on or because of their official duty, or who are being or have been assisted or counseled by their Workplace Violence Prevention Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's full name;
- Date of birth;
- Social Security number;
- Work and home address;
- Work, home and cell numbers;
- Job title, duty station and work shift;
- Leave and attendance records;

- Performance records;
- Supervisor's name and contact information;
- Investigative reports including:
  - Documentation of alleged inappropriate behavior;
  - Video or audio recordings; or
  - Photographs;
  - Court records;
  - Documentation of management or local assessment and response team actions.
- Medical or mental health records including:
  - Evaluations or reports;
  - Attendance at treatment or counseling programs; or
  - Substance abuse records and prognosis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Aviation and Transportation Security Act, Public Law 107–71; 5 U.S.C. 7361, 7362, 7901, 7904; 42 U.S.C. 290dd–2; Executive Order 9397; and Executive Order 12564.

PURPOSE(S):

This record system will maintain information gathered by and in the possession of the Workplace Violence Prevention Program, an internal TSA program designed to prevent and respond to workplace violence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The routine uses listed below do not apply to these types of records.

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation, and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

E. To appropriate state and local authorities to report, under state law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12.

F. To any individual or entity, including medical or mental health personnel or law enforcement, when an individual poses a risk of harm to himself/herself or others, or when relevant to medical or mental health counseling, treatment or evaluation.

G. To the appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

H. To designated officers and employees of federal, state, local, or international agencies in connection with the hiring or continued employment of an individual, the conduct of a suitability or security investigation of an individual, the grant, renewal, suspension, or revocation of a security clearance, or the certification of security clearances, to the extent that DHS determines the information is relevant and necessary to the agency's decision.

I. To airport operators, aircraft operators, maritime and surface transportation operators, indirect air carriers, and other facility operators on individuals who are their employees, prospective employees (job applicants), contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, or the issuance of such credentials or clearances.

J. To a court, magistrate, or administrative tribunal where a federal agency is a party to the litigation or administrative proceeding in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy or a risk to transportation or national security.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper, audio and video recordings, and in computer-accessible storage media. Records may also be stored on microfiche and roll microfilm. Records that are sensitive or classified are safeguarded in accordance with agency procedures, and applicable Executive Orders and statutes.

RETRIEVABILITY:

Data may be retrieved by an individual's name, social security number, date of birth, and/or other personal identifier related to his/her specific case.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the

information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

The Department is proposing to retain records for seven years after administrative action has been taken. Records associated with this system will be maintained until the National Archives and Records Administration has approved the proposed records disposition schedule.

SYSTEM MANAGER AND ADDRESS:

Program Manager, National Workplace Violence Prevention, TSA–18, Transportation Security Administration, 601 S. 12th St., Arlington, VA 20598–6018.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, TSA will consider individual requests to determine whether or not information may be released. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the TSA FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts."

When seeking records about yourself from this system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the Department of Homeland Security Privacy Act regulations on verification of identity (6 CFR 5.21(d)).

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" and "Record Access Procedure," above.

RECORD SOURCE CATEGORIES:

Information originates from personnel seeking assistance, TSA and its offices, counselors, treatment facilities, and coworkers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted portions of this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Dated: January 21, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–3401 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3307–EM; Docket ID FEMA–2010–0002]

Arizona; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Arizona (FEMA–3307–DR), dated January 24, 2010, and related determinations.

DATES: *Effective Date:* January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective January 29, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–3438 Filed 2–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1872–DR; Docket ID FEMA–2010–0002]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1872–DR), dated February 4, 2010, and related determinations.

DATES: *Effective Date:* February 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

February 4, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms and flooding during the period of December 23, 2009, to January 2, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Bradley, Calhoun, Clark, Clay, Cleveland, Craighead, Dallas, Drew, Grant, Greene, Hempstead, Jackson, Jefferson, Lafayette, Lincoln, Lonoke, Miller, Monroe, Nevada, Ouachita, Poinsett, Prairie, White, and Woodruff Counties for Public Assistance. Direct Federal assistance is authorized. All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–3437 Filed 2–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1871–DR; Docket ID FEMA–2010–0002]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1871–DR), dated February 2, 2010, and related determinations.

DATES: *Effective Date:* February 2, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 2, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from severe winter storms and flooding during the period of December 18–25, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Jackson, Madison, McDowell, Mitchell, Watauga, and Yancey Counties for Public Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–3439 Filed 2–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1085]

Public Workshop on Marine Technology and Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The American Society of Mechanical Engineers (ASME), in coordination with the United States Coast Guard (USCG), is sponsoring a two-day public workshop in Washington DC on marine technology and standards. This public workshop will provide a unique opportunity for classification societies, industry groups, standards development organizations, government organizations, and other interested members of the public to

come together for a professional exchange of information on topics ranging from the technological impact on the marine industry, corresponding coverage in related codes and standards, and government regulations. A related workshop was held in Arlington, VA, on June 3–4, 2008 (73 FR 25756, May 7, 2008), and this workshop will build upon many of the topics discussed there.

DATES: The two-day workshop will be held on Thursday, July 29, 2010, and Friday, July 30, 2010. The deadline for advance registration is Friday, July 16, 2010. If you are interested in presenting a paper at the workshop, you must submit a 100 word abstract to Mr. Joseph S. Brzuszkiewicz, Project Engineering Manager, ASME, by e-mail to *brzuszkiewiczj@asme.org.* Abstracts are due on or before March 1, 2010.

See **SUPPLEMENTARY INFORMATION** below for other dates related to submission of abstracts, draft papers, and presentations, as well as more information on how to register for the workshop.

ADDRESSES: The workshop will be held at The Liaison Capitol Hill, An Affinia Hotel, located at 415 New Jersey Avenue, NW., in Washington, DC, approximately 3 blocks from Union Station. The hotel phone number is (202) 638–1616 and the hotel Web site is: *http://www.affinia.com/Washington-DC-Hotel.aspx?name=Liaison-Capitol-Hill.* For registration for this workshop or to obtain further information, visit the USCG Website at *http://www.uscg.mil/marine_event.* The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–1085 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Lieutenant Commander Rob Griffiths, Office of Design and Engineering Standards, USCG, telephone (202) 372–1367, e-mail *Robert.P.Griffiths@uscg.mil;* or contact Mr. Joseph S. Brzuszkiewicz, Project Engineering Manager, ASME, telephone (212) 591–8533, e-mail *brzuszkiewiczj@asme.org.*

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The ASME/USCG Workshop on Marine Technology and Standards provides a unique opportunity for classification societies, industry groups, standards development organizations, government agencies, and interested members of the public to come together for a professional exchange of information on topics ranging from the technological impact on the marine industry, corresponding coverage in related codes and standards, and government regulations.

The public workshop is sponsored by the American Society of Mechanical Engineers (ASME), in coordination with the USCG Office of Design and Engineering Standards. ASME is a standards setting organization with wide-ranging volunteer committee membership, which includes USCG supported personnel who serve as members of various ASME committees in support of USCG missions in maritime safety and environmental protection. The USCG Office of Design and Engineering Standards is responsible for developing and promulgating national regulations and standards that govern the safe design and construction of ships and shipboard equipment, including hull structure, stability, electrical & mechanical systems, lifesaving and fire safety equipment, and related equipment approval and laboratory acceptance.

Topics for the 2010 workshop are listed below and include application of various marine technologies to promote green ships, such as safe and economical use of hydrogen (H_2) fuel cells to power ships with zero carbon dioxide (CO_2) emissions and compressed natural gas (CNG) powered ships with reduced CO_2 emissions. This workshop will provide an opportunity for the public to provide expertise on technical matters affecting the marine industry and to improve future policymaking, standards development, and rulemaking, including discussion of possible regulatory changes to facilitate green ship technology. Public engagement on regulations and standards is important to enhance the overall effectiveness and improve the quality of our decisions. It also promotes greater transparency.

Topics of Meeting

This workshop comprises a series of panel sessions over a two-day period covering a variety of topics, including:

Green Ship Technology

- Hydrogen Fuel Cell Propulsion
- Standards for H_2 Storage and Delivery
- Emission Cleaning Technology
- CO_2 Emission Reduction
- Gas Fueled Ships
- CNG/LNG Technologies
- Use of Biofuels

Offshore Marine Structures

- Floating, Production, Storage and Offloading (FPSO) Units—Topside
- Floating Wind Turbines
- Deepwater Ports
- Diving Systems to Support Offshore Activities

Codes & Standards

- Updates to ASME Code Section VIII, Divisions 2 and 3 regarding Rules of Construction for Pressure Vessels
- Use of ASME Code Section XII—Transport Tanks
- Limit Design for Pressure Vessels
- ASME Code Section X on Fiber-Reinforced Plastic Pressure Vessels for CNG Transport
- ASME Code for Pressure Vessels for Human Occupancy (PVHO)

Material Selection for the Marine Environment

- Nonmetallic Materials for Shipboard Equipment
- Composite Pressure Vessels
- Coating Selection

Risk/Hazard Mitigation

- Transporting CNG as Cargo
- Shipboard Fire Safety for Green Ship/Emerging Technology
- Maintenance and Inservice Inspection

Regulatory/Classification/Governmental Issues

- Rulemaking Process/Future Actions
- Regulatory Gaps Pertaining to Technological Advancements
- Adoption of Standards in Regulations
- Updates on Classification Issues
- OMB Circular A 119

Emerging Technologies

- Ballast Water Management Systems Standardization

Call for Papers

Abstracts

If you are interested in presenting a paper on one or more topics listed above, submit a 100 word abstract to Mr. Joseph S. Brzuszkiewicz, Project Engineering Manager, ASME, by e-mail to *brzuszkiewiczj@asme.org.* Abstracts are due on or before March 1, 2010, and

should also contain the title of your paper, name of each author/co-author, name of each presenter and affiliation to author/co-author, as well as the title, address, phone number, facsimile number, and e-mail address for each named individual.

Draft Papers and Presentations

If you receive notification from us that your abstract is accepted, you may then submit a draft paper and presentation to Lieutenant Commander Rob Griffiths, Office of Design and Engineering Standards, USCG, by e-mail to *Robert.P.Griffiths@uscg.mil.* Draft papers are due on or before April 9, 2010, with final papers, formatted and ready for publication, due on or before June 7, 2010. Presentations are also due on or before June 7, 2010.

Web Sites

For additional information on this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event.*

Registration

To register for this workshop, visit the USCG Web Site listed above in Web Sites. While the workshop is open to the public, meeting space is limited by room capacity. Since seating is limited, we ask anyone interested in attending the workshop to register in advance. The deadline for advance registration is Friday, July 16, 2010. Registration on the first day of the workshop will be permitted on a space-available basis. The registration fee for this event is USD$300. The registration fee includes admission for one person to each panel session for the two day event, several coffee breaks, and a reception on the first day of the event.

Proceedings

Material presented at the workshop will be made available to the public on the USCG Web Site listed above in Web Sites for 30 days after the conclusion of this event. For additional information on material presented at this event, you may contact one of the individuals listed above in **FOR FURTHER INFORMATION CONTACT**. Summaries of comments made and materials presented will be available on the docket at the conclusion of this event. To view the docket, see instructions above in **ADDRESSES**.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Services for Individuals With Disabilities

Persons with disabilities who require special assistance should advise us of their anticipated special needs as early as possible by contacting Mr. Joseph S. Brzuszkiewicz, Project Engineering Manager, ASME, telephone (212) 591–8533, e-mail *brzuszkiewiczj@asme.org.*

Adjournment

Please note that the workshop may adjourn early if all business is finished.

Authority: This notice is issued under authority of 5 U.S.C. 552(a) and 14 U.S.C. 93(a)(4).

Dated: February 16, 2010.

J. G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–3473 Filed 2–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Federal Register Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites comments on an extension of a currently approved information collection clearance Office of Management and Budget (OMB) #1024–0232. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NPS published a 60-day notice to solicit public comments on this ICR in the **Federal Register** on Wednesday, November 4, 2009 (74 FR 57188). The comment period closed on January 4, 2010. No comments were received on this notice.

DATES: Public comments on the Information Collection Request (ICR) will be accepted on or before March 25, 2010.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #0124–0232), Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), by fax at 202/395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please also mail or hand carry a copy of your comments to Diane Miller, National Manager, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102 or via fax at 402/661–1982.

FOR FURTHER INFORMATION CONTACT: Diane Miller, Midwest Regional Office, National Park Service, 601 Riverfront Drive, Omaha, Nebraska 68102 or via fax at 402/661–1982. You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0232.

Title: NPS National Underground Railroad Network to Freedom Application.

Form: National Underground Railroad Network to Freedom Application.

Expiration Date: 2/28/2010.

Type of request: Extension of a currently approved information collection.

Description of need: The NPS has identified guidelines and criteria for associated elements to qualify for the Network. The application form documents sites, programs, and facilities and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes. The proposed information to be collected regarding these sites, facilities, and programs is not available from existing records, sources, or observations. (National Underground Railroad Network to Freedom Act of 1998).

Affected public: The affected public are State, tribal, and local governments, non-profit organizations, and individuals throughout the United States. Nominations to the Network are voluntary.

Obligation to Respond: Required to obtain a benefit.

Frequency of response: On occasion.

Estimated total annual responses: 60.

Estimated average completion time per response: 25.

Estimated annual reporting burden: 1500 hours.

Estimated annual nonhour cost burden: None.

Comments are invited on: (1) The practical utility of the information being

gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that OMB will be able to do so.

Dated: February 18, 2010.

Cartina Miller,

NPS Information Collection Clearance Officer.

[FR Doc. 2010–3556 Filed 2–22–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N033] [96300-1671-0000-P5]

Proposed Information Collection; OMB Control Number 1018-0137; Applications for Single Use Permits and Registration of Production Facilities (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on July 31, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by April 26, 2010.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) uses a system of permits and certificates to help ensure that international trade is legal and does not threaten the survival of wildlife or plant species in the wild. Prior to the import or export of CITES-listed species, the Management Authority and Scientific Authority must make appropriate determinations and issue CITES documents. Section 8A of the Endangered Species Act (16 U.S.C. 1531 et seq.) designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. The Secretary delegated these authorities to the Fish and Wildlife Service.

Before a country can issue an export permit for CITES Appendix I or II specimens, the CITES Scientific Authority of the exporting country must determine that the export will not be detrimental to the species, and the Management Authority must be satisfied that the specimens were acquired legally. For the export of Appendix III specimens, the Management Authority must be satisfied that the specimens were acquired legally (CITES does not require findings from the Scientific Authority). Prior to the importation of Appendix I specimens, both the Scientific Authority and the Management Authority of the importing country must make required findings. The Scientific Authority must also monitor trade of all species to ensure that the level of trade is sustainable.

Article VIII(3) of the treaty states that participating parties should make efforts to ensure that CITES specimens are traded with a minimum of delay. Section XII of Resolution Conf. 12.3 (Rev. CoP13) recommends use of simplified procedures for issuing CITES documents to expedite trade that will have no impact, or a negligible impact, on conservation of the species involved.

We use FWS Form 3-200-74 (Single-Use Export Permits Under a Master File or Annual Program File (CITES)) to streamline the application process for CITES documents that involve multiple, similar actions over a given amount of time. For the initial application, respondents use forms designed specifically to address their particular activity (approved under OMB Control No. 1018-0093). From information in the application, we create a master file or annual program file that contains all the information necessary for us to make the required legal acquisition and nondetriment findings. The applicant can then submit FWS Form 3-200-74 to request authorization to carry out multiple, identical activities over the next 6 months. On FWS Form 3-200-74, we request information only about the number of additional documents the applicant requires to carry out activities approved under the previous application process. By referencing information in the master file or annual program file, we can quickly issue partially completed CITES documents (with certain specific areas left blank for completion by the applicant).

United States facilities, such as farms and aquaculture operations, produce several native U.S. taxa listed in CITES Appendices II and III in closed and semi-closed production systems. By registering a production facility and setting up a master file, we can expedite issuance of export permits for that facility. The registration is valid for 1 year. We use FWS Form 3-200-75 (Registration of a Production Facility for Export of Certain Native Species (CITES)) to collect information on annual production levels, method of producing specimens, source of the parental and founder stock, and method of transport for international trade. This information allows us to issue documents on a very short turnaround time, and we do not need to collect additional information prior to the issuance of export documents.

II. Data

OMB Control Number: 1018-0137.

Title: Applications for Single Use Permits and Registration of Production Facilities (CITES), 50 CFR 13.11, 23.20, 23.36, and 23.51.

Service Form Number(s): 3-200-74 and 3-200-75.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals, businesses, nonprofit organizations, and State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3-200-74	270	810	6 minutes	81
FWS Form 3-200-75	25	25	30 minutes	13
Totals	295	835		94

III. Request for Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 17, 2010

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. 2010–3367 Filed 2–22–10; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Renewal of Agency Information Collection for Indian Self-Determination and Education Assistance Contracts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: The Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) are submitting the information collection, titled "Indian Self-Determination and Education Assistance Act Programs, 25 CFR 900" to the Office of Management and Budget for renewal. The current approval, designated by OMB Control Number 1076–0136, expires on February 28, 2010. The information is collected to process contracts, grants, or cooperative agreements for award by the BIA and the IHS, as authorized by the Indian Self-Determination and Education Assistance Act.

DATES: Submit comments on or before March 25, 2010.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Terry Parks, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4520, Washington, DC 20240, Facsimile: (202) 208–5113.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Terry Parks, telephone: (202) 513–7625.

SUPPLEMENTARY INFORMATION:

I. Abstract

Representatives of the BIA and IHS seek renewal of the approvals for information collections conducted under their joint rule, 25 CFR part 900, implementing the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 *et seq.*). The Act required the joint rule to govern how contracts and grants are awarded to Indian tribes, thereby avoiding the unnecessary burden or confusion associated with two sets of rules and information collection requirements. See 25 U.S.C. 450k(a)(2)(A)(ii). There is no change to the approved burden hours for this information collection.

The information requirements for this joint rule represent significant differences from other agencies in several respects. Both the BIA and IHS let contracts for multiple programs whereas other agencies usually award single grants to tribes. Under the Act, tribes are entitled to contract and may renew contracts annually, whereas other agencies provide grants on a discretionary or competitive basis.

The BIA and IHS use the information collected to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Federal agencies to administer and evaluate contract programs. Tribal governments or tribal organizations provide the information by submitting Public Law 93–638 contract or grant proposals to the appropriate Federal agency. No third party notification or public disclosure burden is associated with this collection. Approval for the collection expires on February 28, 2010.

II. Request for Comments

The BIA and IHS request that you send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m. to 5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your

personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0136.

Title: Indian Self-Determination and Education Assistance Contracts, 25 CFR Part 900.

Brief Description of Collection: An Indian tribe or tribal organization may be required to respond from 1 to 12 times per year, depending upon the number of programs they contract from the BIA and IHS. Each response may vary in its length. In addition, each subpart of 25 CFR part 900 concerns different parts of the contracting process. For example, Subpart C relates to provisions of the contents for the initial contract proposal. The burden associated with this would not be used when contracts are renewed. Subpart F describes minimum standards for the management systems used by Indian tribes or tribal organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contract. Responses are required to obtain or retain a benefit.

Type of Review: Renewal.

Respondents: Federally recognized Indian tribes and tribal organizations.

Number of Respondents: 550.

Total Number of Responses: 5,267.

Estimated Time per Response: Varies from 10 to 50 hours, with an average of 45 hours per response.

Total Annual Burden to Respondents: 219,792 hours.

Dated: December 18, 2009.

Alvin Foster,

Chief Information Officer, Bureau of Indian Affairs.

Dated: December 11, 2009.

Randy Grinnell,

Deputy Director of Indian Health Services.

[FR Doc. 2010–3486 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Tax Credit Bonds for Bureau of Indian Affairs-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Request for comments.

SUMMARY: As required by the Paperwork Reduction Act, the Office of Facilities, Environmental, and Cultural Resources (OFECR), in the Office of the Assistant Secretary—Indian Affairs, is seeking comments on a renewing the information collection entitled "Tax Credit Bonds for Bureau of Indian Affairs-Funded Schools," which has been assigned Office of Management and Budget (OMB) Control Number 1076–0173 and expires on April 30, 2010. This information collection is related to tax credit bonds for BIA-funded schools authorized by the American Reinvestment and Recovery Act of 2009 (ARRA). Indian Tribes interested in obtaining an allocation of the bonding authority to finance construction, rehabilitation, or repair of a BIA-funded elementary or secondary school or dormitory must provide certain information as part of the application. This notice requests comments on the information collection associated with the application.

DATE: Submit comments on or before April 26, 2010.

ADDRESSES: Mail or hand-carry comments to Bernadette Myers, U.S. Department of the Interior, Office of Facilities, Environmental and Cultural Resources, 2051 Mercator Drive, Reston, Virginia 20191; or e-mail to: *Bernadette.Myers@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Bernadette Myers (703) 390–6655.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection allows OFECR to receive written applications for allocations of the $400,000,000 in Tax Credit Bonding Authority granted to the Secretary as a result of the ARRA of 2009. This bonding authority is for the purpose of the construction, rehabilitation and repair of BIA-funded schools. The information collection allows OFECR to determine whether the project is eligible to be considered for an allocation. No third party notification or public disclosure burden is associated with this collection. OFECR obtained an emergency approval of this information collection from OMB to allow it to solicit applications for tax credit bonds. *See* 74 FR 56211 (October 30, 2009). OMB's approval for the information collection expires April 30, 2010. Because the tax credit bond authority extends through calendar year 2010, OFECR is requesting a renewal of the OMB authority to collect information from Indian Tribes through applications.

The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on information collection requests. OFECR is proceeding with this public comment period as the first step in obtaining renewal of the information collection clearance from OMB. Each clearance request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

II. Request for Comments

If you would like to comment on this information collection, please send your comments to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct and an individual need not respond to a collection of information unless it has a valid OMB Control Number. It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, telephone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0173.

Type of Review: Extension without change of a currently approved collection.

Title: Tax Credit Bonds for Bureau of Indian Affairs-Funded Schools.

Brief Description of Collection: Submission of this information is required to apply for allocations of the $400,000,000 in Tax Credit Bonding Authority granted to the Secretary as a result of the ARRA of 2009. This bonding authority is for the purpose of the construction, rehabilitation and repair of BIA-funded schools. The

information collection allows BIA to determine whether the project is eligible to be considered for an allocation. No third party notification or public disclosure burden is associated with this collection. Response is required to obtain a benefit.

Respondents: Indian Tribal governments.

Number of Respondents: 30.

Estimated Time per Response: 40 hours.

Frequency of Response: Once, on occasion.

Total Annual Burden to Respondents: 1,200 hours.

Dated: February 17, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2010–3487 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 47740, LLCAD07000, L51030000.FX0000, LVRAB109AA01]

Notice of Availability of the Draft Environmental Impact Statement/Staff Assessment for the Stirling Energy Systems Solar Two Project and Possible California Desert Conservation Area Plan Amendment

Correction

Notice document 2010–3374 appearing on pages 7515 through 7517 in the issue of Friday, February 19, 2010 was included in error. The document was withdrawn and should not have appeared in the issue.

[FR Doc. C1–2010–3374 Filed 2–22–10; 12:00 pm]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14931–B; LLAK964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Zho-Tse, Incorporated. The lands are in the vicinity of Shageluk, Alaska, and are located in:

Seward Meridian, Alaska

T. 28 N., R. 55 W.,
Sec. 29, lots 6 and 7.
Containing 338.77 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Zho-Tse, Incorporated. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 25, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–3418 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14842–I, F–14842–J, F–14842–K, F–14851–I; LLAK–964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc., Successor in Interest to Buckland Nunachiak Corporation and Successor in Interest to Deering Ipnatchiak Corporation. The lands are in the vicinity of Buckland and Deering, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 5 N., R. 10 W.,
Secs. 13 and 24.
Containing 1,199 acres.
T. 6 N., R. 13 W.,
Secs. 1 and 2;
Secs. 11, 12, and 13.
Containing 3,200 acres.
T. 7 N., R. 13 W.,
Secs. 35 and 36.
Containing 1,280 acres.
T. 7 N., R. 21 W.,
Sec. 18.
Containing 606.65 acres.
Aggregating 6,285.65 acres.

The subsurface estate in these lands will also be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 25, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–3417 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12124; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface estate only for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to The Aleut Corporation for 32.15 acres located on Adak Island, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 25, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. 2010–3416 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2010 is 4.375 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2009 through and including September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Brooke Miller-Levy, Water and Environmental Resources Office, Denver, Colorado 80225; *telephone:* 303–445–2889.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 4.375 percent for fiscal year 2010.

This rate has been computed in accordance with Section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 3.9910 percent. This average value is then rounded to the nearest one-eighth of a point, resulting in 4.0 percent. This exceeds the permissible one-quarter of 1 percent change from fiscal year 2009 to 2010. Therefore, the change is limited to a one-quarter percent decrease.

The rate of 4.375 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: February 9, 2010.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2010–3137 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N261; 80230–1265–0000–S3]

Don Edwards San Francisco Bay National Wildlife Refuge, Alameda, Santa Clara, and San Mateo Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Don Edwards San Francisco Bay National Wildlife Refuge located in Alameda, Santa Clara, and San Mateo Counties of California. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by April 26, 2010.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: sfbaynwrc@fws.gov. Include "Don Edwards San Francisco Bay CCP" in the subject line of the message.

Fax: Attn: Winnie Chan, (510) 792–5828.

U.S. Mail: San Francisco Bay National Wildlife Refuge Complex, 9500 Thornton Avenue, Newark, CA 94560.

In-Person Drop-off: You may drop off comments during regular business hours; please call (510) 792–0222 for directions.

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, or Eric Mruz, Refuge Manager, at (510) 792–0222 or *sfbaynwrc@fws.gov.* Further information may also be found at *http://www.fws.gov/desfbay.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Don Edwards San Francisco Bay NWR in Alameda, Santa Clara, and San Mateo Counties, CA. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct

detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals, objectives, and strategies that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides opportunities for participation by Tribal, State, and local governments; agencies; organizations; and the public. We will be contacting identified stakeholders and individuals at this time for initial input. If you would like to meet with planning staff or would like to receive periodic updates, please contact us (*see* **ADDRESSES** section). We anticipate holding public meetings for initial comments and when alternative management scenarios have been identified. At this time we encourage comments in the form of issues, concerns, ideas, and suggestions for the future management of Don Edwards San Francisco Bay NWR.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Don Edwards San Francisco Bay National Wildlife Refuge

Don Edwards San Francisco Bay National Wildlife Refuge was created by Congress under Public Law 92–330 in 1972, but we did not acquire any lands within the Refuge until 1974. The Refuge was established to preserve and enhance wildlife habitat, protect migratory birds, protect threatened and endangered species, and provide opportunities for wildlife-dependent recreation and environmental education under several acts, including the Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes (16 U.S.C. 667b), Endangered Species Act of 1973 (16 U.S.C. 1537), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(b)(1)). The 30,000-acre Don Edwards San Francisco Bay National Wildlife Refuge, located in Alameda, Santa Clara, and San Mateo Counties of California, consists of several non contiguous parcels divided into four management units that surround the southern edge of the San Francisco Bay.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. These include: Wildlife management, habitat management, wildlife-dependent recreation, environmental education, and cultural resources. During public scoping, we may identify additional issues.

Public Meetings

We will give the public an opportunity to provide input at a public meeting (or meetings). You can obtain the schedule from the refuge planner or refuge manager (*see* **FOR FURTHER INFORMATION CONTACT**). You may also submit comments or request a meeting during the planning process by mail, e-mail, or fax (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 11, 2010.

Ken McDermond,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–3557 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N240; 40136–1265–0000–S3]

Bond Swamp National Wildlife Refuge, Bibb and Twiggs Counties, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive Conservation Plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Bond Swamp National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Ms. Carolyn Johnson, Assistant Refuge Manager, Bond Swamp National Wildlife Refuge, 718 Round Oak-Juliette Road, Round Oak, GA 31038. You may also access and download the document from the Service's Internet Web site: *http://southeast.fws.gov/planning/.*

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Johnson; telephone: 478/986–5441; fax: 478/986–9646; e-mail: *piedmont@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Bond Swamp NWR. We started this process through a notice in the **Federal Register** on May 16, 2007 (72 FR 27586). For more about the process, see that notice.

Bond Swamp NWR is in Bibb and Twiggs Counties, Georgia, about 6 miles south of the city of Macon, Georgia. The refuge covers a total of 7,348 acres within the 18,000-acre acquisition boundary and is situated along the Ocmulgee River. The refuge has a diversity of vegetation communities, including upland mixed pine/hardwood, bottomland hardwood, and tupelo gum swamp forests. Creeks, beaver swamps, and oxbow lakes traverse the forested wetlands. Annually, 8,000 to 10,000 visitors participate in refuge activities.

We announce our decision and the availability of the final CCP and FONSI for Bond Swamp NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA). The CCP will guide us in managing and administering Bond Swamp NWR for the next 15 years.

The compatibility determinations for hunting, fishing, wildlife observation/photography, environmental education/interpretation, boating, firewood cutting, forest management, off-road vehicle use (disabled persons only), resource research studies, and walking/jogging/bicycling are also available in the CCP

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

Approximately 60 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** on June 22, 2009 (74 FR 29511). A total of 61 comments were received from state and local government agencies, non-governmental organizations, and local citizens.

Selected Alternative

After considering the comments we received, and based on the sound professional judgment of the planning team, we selected Alternative C to implement the CCP. This alternative will emphasize biological and visitor services programs on the refuge, which will be protected, maintained, and enhanced by adding more staff, equipment, and facilities. This management alternative will restore and manage the forested wetlands and associated uplands in support of wildlife, especially waterfowl, neotropical migratory birds, and other native wildlife. We considered this alternative to be the most effective for meeting the purposes of the refuge. Alternative C best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 24, 2009.

Jeffrey M. Fleming,

Acting Regional Director.

[FR Doc. 2010–3482 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes approval of the Tribal-State Compact between the Pyramid Lake Paiute Indian Tribe and the State of Nevada Governing Class III Gaming.

DATES: *Effective Date:* February 23, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On December 17, 2009, the Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, approved the compact between the Pyramid Lake Paiute Tribe and the State of Nevada, which was executed on October 22, 2009. The compact authorizes the full gamut of casino-style gaming authorized by the Nevada Gaming Commission and/or lawfully permitted to be played by the State.

Dated: February 4, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–3399 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 13, 2010. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 10, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

MASSACHUSETTS

Suffolk County

Winthrop Center/Metcalf Square Historic District, roughly bounded by Lincoln, Winthrop Sts., Winthrop Cemetery, Buchanan, Fremont, Pauline, Hermon and Belcher Sts., Winthrop, 10000098

NEW YORK

Columbia County

Rowe-Lant Farm, 983 NY Rte. 295, East Chatham, 10000099

Livingston County

Sweet Briar, 5126 Mount Morris Rd., Geneseo, 10000104

Monroe County

First Baptist Church of Mumford, 5 Dakin St., Mumford, 10000100

Onondaga County

Walsh-Havemeyer House, Plympton House, New Windsor, 10000101

Oswego County

Brosemer Brewery (Oswego, Oswego County, New York), 472 W. First St., Oswego, 10000102

Mexico Stone Store, The, (Mexico MPS) 3201 Main St., Mexico, 10000103

Oswego Yacht Club (Oswego, Oswego County, New York), 41 Lake St., Oswego, 10000105

VIRGINIA

Arlington County

Buckingham Historic District (Boundary Increase) (Garden Apartments, Apartment Houses and Apartment Complexes in Arlington County, Virginia MPS), Bounded by and including N. Thomas St., 4th St. N., N. Pershing Dr., and N. George Mason Dr., N/A, 10000092

Danville Independent City Dan River Mill No. 8, 424 Memorial Dr., Danville, 10000095

Loudoun County

Hillsboro Historic District (Updated Nomination and Boundary Increase), Charles Town Pk., between Hillsboro Rd. and Stony Pt. Rd., Hillsboro, 10000091

Mathews County

Sibley's and James Store Historic District, 239 Main St. (Main and Maple Sts.), Mathews, 10000093

Nottoway County

Millbrook, 1204 Snead Spring Rd., Crewe, 10000094

Smyth County

Saltville Battlefields Historic District, SR 91, SR 107, CR 632, Saltville, 10000096

Staunton Independent City

Western State Hospital (Boundary Increase), 301 Greenville Ave., Staunton, 10000097

Request for Boundary Decrease has been made for the following resource:

VIRGINIA

Chesterfield County

Beach Station (Boundary Decrease), 11410 and 11400 Beach Road, Chesterfield, 08000067

Request for REMOVAL has been made for the following resource:

PENNSYLVANIA

Chester County

Chandler Mill Bridge, Kennett Township, Kennett, 09001213

[FR Doc. 2010–3554 Filed 2–22–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b, c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from November 30 to December 4, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: February 16, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARIZONA

Maricopa County

Roosevelt Addition Historic District, 600 block of W. 3rd St., Tempe, 09000959, LISTED, 12/02/09

Pima County

Gist Residence, 5626 E. Burns St., Tucson, 09000960, LISTED, 12/04/09

CONNECTICUT

New London County

St. James' Episcopal Church, 125 Huntington St., New London, 90001098, LISTED, 12/02/09

FLORIDA

Lee County

First Baptist Church of Boca Grande, 421 4th St. W., Boca Grande, 09000962, LISTED, 12/02/09

GEORGIA

Cherokee County

Ball Ground Historic District, Old Canton Rd. and GA 372, Ball Ground, 09001057, LISTED, 12/04/09

MARYLAND

Caroline County

Brick House Farm, 24870 E. Cherry Ln., Greensboro vicinity, 09000963, LISTED, 12/02/09

Leverton, Jacob and Hannah, House, 3531 Seaman Rd., Preston vicinity, 09000964, LISTED, 12/02/09

MASSACHUSETTS

Bristol County

Head of the River Historic District, 2–28 Main St., Acushnet; 2–28 Mill Rd., 2–13 Tarkiln Hill Rd., New Bedford, 09000965, LISTED, 12/02/09

MISSISSIPPI

Clay County

West Point Unified Historic District, Roughly bounded by the rear property lines of resources along E. Main St. to the N., McCord St. to the W., Forest St., West Point, 09000784, LISTED, 12/01/09

Sunflower County

Indianola Historic District, Roughly bounded by Percy St. on the N., Front to Adair on the W. to Roosevelt, Roosevelt E. to Front Extended and N., Indianola, 09000356, LISTED, 11/30/09

NEW JERSEY

Hunterdon County

Seargeantsville Historic District, Co. Rts. 523 & 604, Lambert Rd., Delaware Dr., Delaware Township, 09000972, LISTED, 12/02/09

Morris County

Chamberlain, George, House, 315 Dover-Milton Rd., Jefferson, 09000973, LISTED, 12/02/09

NEW YORK

Kings County

Kol Israel Synagogue, 603 St. John's Place, Brooklyn, 09000966, LISTED, 12/02/09

Shaari Zedek Synagogue, 767 Putnam Ave., Brooklyn, 09000968, LISTED, 12/04/09

Suffolk County

Sherwood-Jayne House, 55 Old Post Rd., East Setauket, 09000969, LISTED, 12/02/09

Sullivan County

Spring House, 54 River Rd., Barryville, 09000970, LISTED, 12/02/09

OKLAHOMA

Craig County

Attucks School, 346 S. 4th, Vinita, 09000974, LISTED, 12/03/09

Ellis County

Ingle Brothers Broomcorn Warehouse, 320 NW 1st St., Shattuck, 09000975, LISTED, 12/03/09

Greer County

Downtown Mangum Historic District, roughly bounded by E. Lincoln, S. Pennsylvania, N. Oklahoma and S. Oklahoma, Mangum, 09000976, LISTED, 12/03/09, (County Courthouses of Oklahoma TR)

Jefferson County

Irving Baptist Church, OK Rt. 1 Box 32, Ryan, 09000977, LISTED, 12/03/09

Payne County

Bassett House, The, 1100 E. 9th Pl., Cushing, 09000979, LISTED, 12/03/09

TEXAS

Collin County

Allen Water Station, N. of Exchange Pkwy on Cottonwood Creek, Allen, 09000980, LISTED, 12/03/09

Kendall County

Herff-Rozelle Farm, 33 Heroff Rd., Boerne, 09000983, LISTED, 12/03/09

Tarrant County

First National Bank Building, 711 Houston St., Fort Worth, 09000981, LISTED, 12/03/09

Petroleum Building, 210 W. 6th. St., Fort Worth, 09000982, LISTED, 12/03/09

S. Main St. Historic District, 104, 108, 126 & 200 blocks S. Main St., Fort Worth, 09000984, LISTED, 12/03/09

UTAH

Carbon County

42Cb1252, Address Restricted, Price, 09000988, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb145, Address Restricted, Price, 09001019, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb1758, Address Restricted, Price, 09000992, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb2024, Address Restricted, Price, 09000989, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb2043, Address Restricted, Price, 09001012, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb2218, Address Restricted, Price, 09000990, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb242, Address Restricted, Price, 09000991, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb31, Address Restricted, Price, 09001021, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb33, Address Restricted, Price, 09000994, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb36, Address Restricted, Price, 09000999, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb46, Address Restricted, Price, 09000998, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb48, Address Restricted, Price, 09000997, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb50, Address Restricted, Price, 09000993, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb51, Address Restricted, Price, 09001000, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb52, Address Restricted, Price, 09001020, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb690, Address Restricted, Price, 09001002, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb697, Address Restricted, Price, 09001003, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb729, Address Restricted, Price, 09001005, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb730, Address Restricted, Price, 09001011, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb731, Address Restricted, Price, 09001004, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb736, Address Restricted, Price, 09001008, LISTED, 11/30/09, (Nine Mile Canyon, Utah)

42Cb743, Address Restricted, Price, 09001007, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb744, Address Restricted, Price, 09001018, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb745, Address Restricted, Price, 09001017, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb746, Address Restricted, Price, 09000996, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb804, Address Restricted, Price, 09001006, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb809, Address Restricted, Price, 09000995, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb811, Address Restricted, Price, 09001010, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb851, Address Restricted, Price, 09000986, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb893, Address Restricted, Price, 09001009, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb969, Address Restricted, Price, 09000985, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Cb974, Address Restricted, Price, 09000987, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc706, Address Restricted, Price, 09001016, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Cottonwood Village, Address Restricted, Price, 09001015, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Drop-Dead Ruin, Address Restricted, Price, 09001014, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

First Canyon Site, Address Restricted, Price, 09001013, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc306, Address Restricted, Price, 09001040, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc638, Address Restricted, Price, 09001039, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc682, Address Restricted, Price, 09001026, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc683, Address Restricted, Price, 09001027, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc684, Address Restricted, Price, 09001038, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc685, Address Restricted, Price, 09001037, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc686, Address Restricted, Price, 09001036, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc687, Address Restricted, Price, 09001035, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc688, Address Restricted, Price, 09001034, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc696, Address Restricted, Price, 09001025, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc700, Address Restricted, Price, 09001022, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc702, Address Restricted, Price, 09001033, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc703, Address Restricted, Price, 09001031, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc704, Address Restricted, Price, 09001030, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc705, Address Restricted, Price, 09001023, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc708, Address Restricted, Price, 09001029, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc709, Address Restricted, Price, 09001028, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc710, Address Restricted, Price, 09001024, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

42Dc712, Address Restricted, Price, 09001032, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Centennial House, Address Restricted, Price, 09001042, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Fool's Pinnacle, Address Restricted, Price, 09001041, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Karen's Cist, Address Restricted, Price, 09001043, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Maxies Pad, Address Restricted, Price, 09001044, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Nordell's Fort, Address Restricted, Price, 09001045, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Redman Village, Address Restricted, Price, 09001047, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Sunstone Village, Address Restricted, Price, 09001046, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

Taylor's City, Address Restricted, Price, 09001048, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

VIRGINIA

Charlotte County

Four Locust Farm, U.S. Rt. 15, Keysville vicinity, 09001053, LISTED, 12/03/09

Gloucester County

Walker, T.C., House, 1 Main St., Gloucester, 09001050, LISTED, 12/04/09

Rockbridge County

Willson House, 367 VA 673, Lexington vicinity, 09001049, LISTED, 12/03/09

[FR Doc. 2010–3553 Filed 2–22–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–ET; AA–3060]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6888 for an additional 20-year period. This order withdrew approximately 320 acres of National Forest System land from surface entry and mining, but not from mineral leasing laws, to protect the recreational values of the Juneau Falls Recreation Area. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments meeting requests for a public meeting must be received by May 24, 2010.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Robert Lloyd, BLM Alaska State Office, 907–271–4682 or at the address listed above.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6888 (56 FR 50661 (1991)) will expire on October 7, 2011, unless extended. The USDA Forest Service has filed an application to extend the withdrawal for an additional 20-year period to protect the recreational values of the Juneau Falls Recreation Area.

This withdrawal comprises approximately 320 acres of National Forest System land located in the Chugach National Forest, within T. 5 N., R. 4 W., Seward Meridian, as described in PLO No. 6888.

A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address listed above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the recreational values of the Juneau Falls Recreation Area.

There are no suitable alternative sites available that could be substituted for the above described National Forest system land, since the Juneau Falls Recreation Area is unique.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address listed above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Alaska State Director to the address listed above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and at least one local newspaper no less than 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120.

Authority: 43 CFR 2310.3–1(b).

Robert L. Lloyd,

Acting Deputy State Director, Division of Alaska Lands.

[FR Doc. 2010–3419 Filed 2–22–10; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Second Review)]

Preserved Mushrooms From Chile, China, India, and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

DATES: *Effective Date:* February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2010, the Commission established a schedule for the conduct of the expedited five-year reviews and

determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) (75 FR 3756, January 22, 2010). Due to the closure of the Government during the recent snowstorms, the Commission is revising its schedule. The Commission's new schedule for the reviews is as follows: the staff report will be placed in the nonpublic record on March 9, 2010; and the deadline for filing comments is March 15, 2010.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3528 Filed 2–22–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Third Review)]

Chloropicrin From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: *Effective Date:* February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 15, 2009, the Commission established a schedule for the conduct of this review (74 FR 55065, October 26, 2009).

Subsequently, counsel for three domestic interested parties filed a request to appear at the hearing or, in the alternative, for leave to submit written testimony in lieu of an oral presentation. In connection with the offer of written testimony, counsel indicated a willingness to respond to written questions of the Commissioners by a date to be set by the Commission. No other party filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on February 18, 2010, at the U.S. International Trade Commission Building is cancelled.

The Commission has determined to accept the offer to submit written testimony in lieu of an oral public hearing presentation. Written testimony shall be filed with the Commission by the close of business on Thursday, February 18, 2010. The parties are expected to respond to the Commission's written questions in their post-hearing briefs, which are due to be filed on March 1, 2010.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3530 Filed 2–22–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–703]

In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 14, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Eastman Kodak Company of Rochester, New York. A letter supplementing the complaint was filed on February 4, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephones and wireless communication devices featuring digital cameras, and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,292,218. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 16, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile telephones or wireless communication devices featuring digital cameras, or

components thereof that infringe one or more of claims 15 and 23–27 of U.S. Patent No. 6,292,218, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Eastman Kodak Company, 343 State Street, Rochester, NY 14650.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Research In Motion, Ltd., 295 Phillip Street, Waterloo, Ontario, Canada N2L 3W8;

Research In Motion Corporation, 122 West John Carpenter Parkway, Suite 430, Irving, TX 75039;

Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

(c) The Commission investigative attorney, party to this investigation, is Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 17, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3426 Filed 2–22–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–464 and 731–TA–1160 (Final)]

Prestressed Concrete Steel Wire Strand From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: *Effective Date:* February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective December 23, 2009, the Commission established a schedule for the conduct of the final phase of the subject investigations (75 FR 4104, January 26, 2010). On January 28, 2010, the Commission was notified by the petitioners of a substantial conflict with respect to their ability to participate in the hearing. Accordingly, at the request of the petitioners and absent any argument to the contrary, the Commission is revising its schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 30, 2010; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 4, 2010; the prehearing staff report will be placed in the nonpublic record on April 22, 2010; the deadline for filing prehearing briefs is April 29; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 6, 2010; the deadline for filing posthearing briefs is May 14, 2010; the Commission will make its final release of information on June 2, 2010; and final party comments are due on June 4, 2010.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 17, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3425 Filed 2–22–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–474 and 731–TA–1176 (Preliminary)]

Drill Pipe From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject antidumping and countervailing duty investigations.

DATES: *Effective Date:* February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Angela M.W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*

SUPPLEMENTARY INFORMATION: Effective December 31, 2009, the Commission established a schedule for the conduct of these investigations (75 FR 877, January 6, 2010). Due to the closure of the Federal Government for four days as a result of inclement weather and related disruptions, the Commission is issuing a revised schedule.

The Commission's new schedule for the investigations is as follows: the Commission must reach its preliminary determination in these antidumping and countervailing duty investigations by February 22, 2010, and the Commission's views are due to the U.S. Department of Commerce five business days thereafter, or by March 1, 2010.

For further information concerning the investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: The investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 16, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3424 Filed 2–22–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–167 (Third Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: *Effective Date:* February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 20, 2009, the Commission established a schedule for the conduct of the review (74 FR 43155, August 26, 2009). Due to the closure of the Federal Government for four days as a result of inclement weather and related disruptions, the Commission is issuing a revised schedule.

The Commission's new schedule for the review is as follows: the closing of the record and final release of data to parties will be February 18, 2010, and final comments of parties will be due on February 22, 2010.

For further information concerning the review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: The review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 16, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3423 Filed 2–22–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–655]

In the Matter of Certain Cast Steel Railway Wheels, Processes for Manufacturing or Relating to Same and Certain Products Containing Same ; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order as well as cease and desist orders directed to cast steel railway wheels and products containing same manufactured by or for Respondents using any of the trade secrets asserted in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 16, 2008, based on a complaint filed on August 14, 2008, by Amsted Industries Incorporated of Chicago, Illinois ("Amsted"). 73 FR 53441–42 (Sept. 16, 2008). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cast steel railway wheels and certain products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to substantially injure an industry in the United States. The complaint named four respondents: Tianrui Group Company Limited of China; Tianrui Group Foundry Company Limited of China (collectively "Tianrui"); Standard Car Truck Company, Inc. of Park Ridge, Illinois ("SCT"); and Barber Tianrui Railway Supply, LLC of Park Ridge, Illinois ("Barber").

On October 16, 2009, the Administrative Law Judge ("ALJ") issued his final initial determination ("ID") finding a violation of section 337 by respondents. He found that Amsted owns the asserted trade secrets, the ABC Trade Secrets, and that respondents misappropriated the trade secrets via disclosure by former employees of Amsted's predecessors, the threat or effect of which is to destroy or substantially injure an industry in the United States. On October 29, 2009, the ALJ issued his recommended determination ("RD") on remedy and bonding. The ALJ recommended that the Commission issue a limited exclusion order as well as cease and desist orders directed to respondents found in violation of section 337. He further recommended that the

Commission set a bond of five percent of entered value of accused products imported during the period of Presidential review.

On October 30, 2009, SCT and Barber ("SCT–Barber") filed a joint petition for review of the final ID. Tianrui filed a petition for review on November 2, 2009, and complainant Amsted filed a contingent petition for review that same day. Amsted filed responses to SCT–Barber's and Tianrui's petitions on November 9 and 10, respectively, and SCT–Barber and Tianrui filed their responses to Amsted's petition on November 10. The Commission investigative attorneys ("IAs") filed responses to the various petitions for review on November 10. The IAs did not petition for review of the ID.

On December 17, 2009, the Commission determined not to review the ID and requested briefing on remedy, the public interest, and bonding. 74 FR 68282–83 (Dec. 23, 2009). On December 29, 2009, the parties submitted written submissions on the issues for which the Commission requested further briefing, and submitted replies to the written submissions on January 6, 2010.

Having reviewed the record in this investigation, including the ID and the parties' written submissions, the Commission has determined that the appropriate remedy is a limited exclusion order lasting a period of ten (10) years as well as cease and desist orders, lasting the same period, directed to Respondents. The limited exclusion order prohibits the entry of cast steel railway wheels and products containing same, manufactured using any of the asserted ABC Trade Secrets by or on behalf of, or imported by or on behalf of, Respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, for consumption in the United States. The cease and desist orders prohibit Respondents from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), soliciting U.S. agents or distributors, or aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of cast steel railway wheels and products containing the same manufactured using any of the asserted ABC Trade Secrets.

The Commission further determines that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. 1337(d), (f)) do not preclude issuance of the limited exclusion order. Finally, the Commission determines that a bond of five percent of the entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of cast steel railway wheels and products containing the same that are subject to the order. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.50.

Issued: February 16, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3421 Filed 2–22–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–672]

In the Matter of Certain Electronic Devices Having Image Capture or Display Functionality and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 19) of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 30, 2009, based on a complaint filed by LG Electronics of Seoul, Korea ("LG"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain electronic devices having image capture or display functionality or components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,995,767, 5,774,131, and 6,281,895. 74 FR 14157 (2009). The complainant named Eastman Kodak Company of Rochester, New York ("Kodak") as the respondent.

On December 16, 2009, LG and Kodak jointly moved to terminate the investigation based on a settlement agreement. The Commission investigative attorney supported the motion.

On January 19, 2010, the ALJ issued an ID (Order No. 19) granting the motion. No party petitioned for review of the ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

Issued: February 16, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3420 Filed 2–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on January 8, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Institute of Electrical and Electronics Engineers ("IEEE") has filed written notifications

simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Acts provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 31 new standards have been initiated and 21 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/ll-2009.html* and *http://standards.ieee.org/standardswire/sba/l2-09-09.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on December 28, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 19, 2010 (75 FR 2890).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–3085 Filed 2–22–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ice Crystal Consortium

Notice is hereby given that, on December 31, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Ice Crystal Consortium ("ICC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Airbus SAS, Toulouse, FRANCE has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project.

On July 28, 2009, ICC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2009 (74 FR 43157).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–3088 Filed 2–22–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on January 11, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, General Dynamics, Falls Church, VA; STM (Savunma Teknolojileri Muhendislik ve Ticaret A.S.), Ankara, TURKEY; Twisted Pair Solutions, Inc., Seattle, WA; TKC Communications, LLC, Fairfax, VA; Huneed Technologies, Gunpo-si, Gyeonggi-do, REPUBLIC OF KOREA; Telindus, Heverlee, BELGIUM; Bellcomm Information Systems, Madrid, Madrid, SPAIN; and SenseResponder LLC, San Diego, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on October 26, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62600).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–3086 Filed 2–22–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Under Tip Award No. 70NANB10H009

Notice is hereby given that, on January 15, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Joint Venture under TIP Award No. 70NANB10H009 ("JV TIP H009") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: wTe Corporation, Bedford, MA; Energy Research Company, Staten Island, NY; and National Recovery Technologies, Inc., Nashville, TN. The general area of JV TIP H009's planned activity is to develop, scale-up and integrate transformational technologies for high-speed scrap sortation of mixed metals by alloy type, and for real-time, molten metal analysis of high-temperature alloys.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–3084 Filed 2–22–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: 2010–01; Deutsche Bank, AG (Deutsche Bank or the Applicant), D–11082 and D–11109; 2010–02, State Street Bank and Trust Company, D–11522; and 2010–03, The Bank of New York Mellon (BNY Mellon), D–11571

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank, AG (Deutsche Bank or the Applicant) Located in Germany, with Affiliates in New York, NY and Other Locations

[Prohibited Transaction Exemption 2010–01; Exemption Application Nos. D–11082 and D–11109.]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act (or ERISA), and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective July 8, 2008, to the following foreign exchange transactions involving less developed currencies, that are executed by Deutsche Bank or a current or future affiliate (domestic or foreign) thereof that is a bank or broker-dealer, acting as a local subcustodian where Deutsche Bank or its affiliates, as asset managers, have determined to invest the assets of a client plan held in a separately managed account, an in-house plan whose assets are held in a separately managed account with Deutsche Bank or its affiliate, or a pooled fund, in foreign securities, if the conditions set forth in Sections II, III and IV below are met with respect to:

(1) A trade-related currency conversion, or

(2) An income item conversion.

Section II. General Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the client plan, in-house plan or pooled fund than the terms generally available in a comparable arm's length foreign exchange transaction between unrelated parties.

(b) The exchange rate used for a particular foreign exchange transaction does not deviate by more than 3 percent (above or below) the interbank bid and asked rates for such currency at the time of the transaction as displayed on an independent, nationally-recognized service that reports rates of exchange in the foreign currency market for such currency.

(c) The covered transactions are limited to those less developed currencies in which a transaction is executed with Deutsche Bank or its affiliate acting as local subcustodian at the direction of the global custodian because the global custodian either does not make a market in such currency, or otherwise determines to execute with the local subcustodian because of market conditions, market restrictions, illiquidity of the currency or similar exigencies.

(d) Where a market is served by more than one subcustodian, Deutsche Bank or its affiliate, as asset manager, has no decision making authority or role, or otherwise makes no recommendations with respect to the global custodian's selection of the subcustodian.

(e) The foreign exchange transaction is executed by Deutsche Bank or its affiliate thereof acting as subcustodian at the direction of the global custodian in the ordinary course of its business as global custodian.

(f) The decision to select Deutsche Bank or its affiliate as the subcustodian is made by an unrelated global custodian for the relevant account.

(g) The selection of Deutsche Bank or its affiliate as subcustodian and any foreign exchange transactions executed by Deutsche Bank or its affiliate at the direction of the global custodian are not part of any agreement, arrangement or understanding, written or otherwise, designed to benefit Deutsche Bank, its affiliate or any other party in interest.

(h) Deutsche Bank or its affiliate, as asset manager, appoints an independent fiduciary to receive, review and take appropriate action, if any, with respect to the report required by Section II(l)(3) and the notices in Section III(a) and (c) on behalf of (1) an in-house plan, or

(2) plans investing in a restricted pooled fund.

(i) The decision to select Deutsche Bank or its affiliate as asset manager is part of an investment strategy that is adopted by an independent fiduciary of a client plan whose assets are held in a separately managed account or the independent fiduciary of an unrelated pooled fund.

(j) On an annual basis, determined as of December 31 of the relevant year, the percentage of assets of in-house plans and pooled funds in which client plans invest for which Deutsche Bank and/or its affiliates select the global custodian represent less than 20 percent of the total assets under custody by any such global custodian.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(k) Foreign affiliates of Deutsche Bank which engage in the covered transactions—

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to service of process on the Process Agent;

(4) Agree that they may be sued in the United States Courts in connection with the covered transactions described in this exemption;

(5) Agree that any judgment on behalf of a plan or pooled fund may be collected in the United States from Deutsche Bank; and

(6) Agree to comply with, and be subject to, all relevant provisions of the Act.

(l) With respect to the covered transactions—

(1) Deutsche Bank or its affiliate as asset manager, designates an individual (the responsible reviewing individual) who is responsible for periodically (but no less frequently than on an annual basis) reviewing a sample of such foreign exchange transactions to determine whether the covered transactions have been executed in accordance with the terms of this exemption. Such sample must include a sufficient number of transactions to ensure that each affected currency is tested.

(2) Deutsche Bank or its affiliate provides the responsible reviewing individual with the records (which may be provided electronically) described in Section IV(a)(1)–(7), on an annual basis.

(3) The responsible reviewing individual notifies Deutsche Bank or its affiliate as asset manager, the independent fiduciary of each client plan whose assets are held in a separately managed account, the independent fiduciary of an in-house plan and any restricted pooled fund required under Section II(h), the independent fiduciary of an unrelated pooled fund, and the independent fiduciary of each plan investing in an unrestricted pooled fund, of its findings in a written report within 90 days after the period to which the periodic review relates. Such report describes the steps performed by such individual during the course of the review, the level of compliance by Deutsche Bank or its affiliate with the terms and conditions of the exemption, and any specific instances of non-compliance by Deutsche Bank or its affiliate with the terms and conditions of the exemption.

Section III. Notice Requirements

(a) At the time Deutsche Bank or its affiliate is retained as asset manager, or prior to the initial investment of the plan's assets or pooled fund's assets in any foreign investments that may require the execution of a foreign exchange transaction by Deutsche Bank or its affiliate as subcustodian, Deutsche Bank or its affiliate provides the independent fiduciary of each client plan whose assets are held in a separately managed account, the independent fiduciary of each in-house plan and restricted pooled fund as required under Section II(h), the independent fiduciary of each unrelated pooled fund, and the independent fiduciary of each plan investing in an unrestricted pooled fund, a written notice (which may be effected electronically) that includes the following:

(1) The reasons why Deutsche Bank or its affiliate as asset manager, may consider a particular market to be an appropriate investment for the plan or pooled fund.

(2) The factors considered by Deutsche Bank or its affiliate as asset manager, in its selection of a global custodian (if applicable) including: (i) The identity of the global custodian; and (ii) a summary of the global custodian's policies and procedures regarding the handling of foreign exchange transactions for plans or pooled funds with respect to which Deutsche Bank or its affiliate is a fiduciary and the factors that the global custodian considers in its selection of a subcustodian.

(3) Notice that such foreign exchange transaction may be executed by Deutsche Bank or its affiliate as subcustodian, at the direction of a global custodian.

(4) A list of the markets in which plans or pooled funds may invest where Deutsche Bank or its affiliate serves as a subcustodian, where a foreign exchange transaction may be executed by Deutsche Bank or its affiliate as subcustodian at the direction of a global custodian.

(5) A list of the markets where currency transactions are executed by Deutsche Bank or an affiliate, as subcustodian, to the extent known.

(6) Notice that Deutsche Bank or its affiliate maintains records (described in Section IV), and that such records are reasonably available at their customary location for examination in the U.S., during normal business hours, by the responsible reviewing individual, the independent fiduciary of a client plan whose assets are held in a separate account, the independent fiduciary of an in-house plan or a restricted pooled fund, as required under Section II(h), the independent fiduciary of an unrelated pooled fund, the independent fiduciary of each plan investing in an unrestricted pooled fund, any participant or beneficiary of such plan or pooled fund, or any duly authorized employee or representative of such participant or beneficiary.

(7) Copies of the notice of proposed exemption and the grant of final exemption with respect to the subject transactions.

(8) Notice of the definition of the term "independent" under this exemption as used in the term "independent fiduciary," and a request that the independent fiduciary of a client plan notify Deutsche Bank or its affiliate asset manager if, at any time, such fiduciary is not independent of Deutsche Bank.

(b) If the independent fiduciary fails to object in writing to Deutsche Bank or its affiliate within 30 days following receipt of the information described in Section III(a) by such fiduciary, then such fiduciary's authorization of the arrangement contemplated under this exemption shall be presumed.

(c) Deutsche Bank or its affiliate as asset manager shall provide notification of any changes to the information required by Section III, including, but not limited to, the situation where Deutsche Bank or its affiliate as asset manager, replaces the global custodian with another independent entity or where there are changes in the markets in which currency transactions are executed by the subcustodian. If the independent fiduciary fails to object in writing to Deutsche Bank or its affiliate as asset manager within 30 days following disclosure of such changes, such fiduciary's approval of these changes shall be presumed.

(d) With respect to pooled funds, in the event the independent fiduciary of a client plan submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, a material change in or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to so withdraw, the withdrawal shall be effected prior to the implementation of a material change in the arrangement, but an existing arrangement need not be discontinued

by reason of a plan electing to withdraw.

Section IV. Recordkeeping Requirements

(a) Deutsche Bank or its affiliate maintains, or causes to be maintained, for a period of six years from the date of the covered transactions, the following records, as well as any records necessary to enable the persons described in paragraph (c) of this Section IV, to determine whether the conditions of this exemption have been met:

(1) The account name,

(2) The foreign exchange transaction execution date,

(3) The exchange rate,

(4) The high and low on Reuters or similar independent service on the date of the transaction,

(5) The identity of the foreign currency sold or purchased,

(6) The amount of foreign currency sold or purchased,

(7) The amount of U.S. dollars exchanged, where the exchange is between foreign currencies and U.S. dollars or the amount of foreign currency exchanged, where the exchange is between two foreign currencies, and

(8) The annual report described in Section II(l).

(b) The following are exceptions to paragraph (a) of this Section IV:

(1) If the records necessary to enable the persons described in paragraph (c) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of Deutsche Bank, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than Deutsche Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in paragraph (c)(2) of this Section IV and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) of this Section IV are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) The independent fiduciary of a client plan whose assets are held in a separately managed account, the independent fiduciary of an in-house plan or restricted pooled fund required under Section II(h), the independent fiduciary of each unrelated pooled fund, or the independent fiduciary of each plan investing in an unrestricted pooled fund, or

(iii) Any participant or beneficiary of such plans or pooled funds (described in paragraph (ii) above) or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (c)(1) of this Section IV shall be authorized to examine trade secrets of Deutsche Bank, or any commercial or financial information, which is privileged or confidential.

(3) Should Deutsche Bank refuse to disclose information on the basis that such information is exempt from disclosure, Deutsche Bank shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that the person of the reason for the refusal and that the Department may request such information.

Section V. Definitions

For purposes of this exemption,

(a) The term "Deutsche Bank" means Deutsche Bank AG.

(b) An "affiliate" of Deutsche Bank means any domestic or foreign bank or broker-dealer that is, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank;

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "bank" means a bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Investment Advisers Act), or an institution that has substantially similar powers to a bank defined in section 202(a) of the Investment Advisers Act, and is—

(1) Supervised by the United States or a State;

(2) Supervised and examined by the German banking authorities, or monitored and controlled pursuant to the statutory and regulatory standards of German law; or

(3) Subject to regulation and oversight by governmental entities that are substantially similar to the regulatory oversight of banks present in the United States.

(e) The term "broker-dealer" means a broker-dealer registered under the Securities Exchange Act of 1934, or is engaged in the business of effecting transactions in securities for the account of others, and is—

(1) Registered and regulated under the relevant securities laws of the United States;

(2) Registered and regulated under the relevant securities laws of Germany; or

(3) Registered and regulated under the relevant securities laws of a country with securities laws that are substantially similar to the securities laws governing broker-dealers in the United States.

(f) The term "global custodian" means a bank or broker-dealer that is unrelated to Deutsche Bank or its affiliate, which is selected by (1) The independent fiduciary of a client plan in the case of a separately managed account; (2) the sponsor (other than Deutsche Bank or its affiliate) of an unrelated pooled fund; (3) Deutsche Bank or its affiliate as asset manager, in the case of an in-house plan; or (4) Deutsche Bank or its affiliate as asset manager in the case of a pooled fund established by Deutsche Bank or an affiliate, for the purpose of holding and safeguarding the assets of the client plan, in-house plan, or pooled fund, physically or through securities depositories, foreign clearing agencies or other entities which act as securities depositories, through its branches or through its subcustodian network. For purposes of Section V(f) only, the global custodian will be unrelated to Deutsche Bank or its affiliate if the global custodian is not controlling, controlled by under common control with Deutsche Bank, directly or indirectly through one or more intermediaries.

(g) The term "subcustodian" means a bank or broker-dealer, selected by a global custodian, to hold and safekeep designated assets of the plan or pooled fund at securities depositories, foreign clearing agencies or other entities which act as securities depositories, and at the direction of the global custodian to execute foreign exchange transactions and income item conversions. A subcustodian has no contractual relationship with the global custodian's clients for custodial or subcustodial services with respect to the assets involved in the covered transactions, but the subcustodian's contractual relationship with respect to subcustody is only with the global custodian.

(h) The term "responsible reviewing individual" means a senior official appointed by Deutsche Bank or its affiliate acting as asset manager, who has at least 10 years experience with the fiduciary responsibility provisions of

the Act, and appropriate compliance training. Such person is appointed by Deutsche Bank or its affiliate to review a sample of the covered transactions periodically, but no less frequently than on an annual basis, in order to ensure compliance with the terms of the exemption on behalf of a client plan whose assets are held in a separately managed account, an in-house plan, or a pooled fund.

(i) The term "in-house plan" means an employee benefit plan as described in section 3(3) of the Act, or a plan as described in section 4975(e)(1) of the Code, that is sponsored by Deutsche Bank or any person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank.

(j) The term "client plan" means an employee benefit plan, as described in section 3(3) of the Act, or a plan, as described in section 4975(e)(1) of the Code, other than an in-house plan, with respect to which Deutsche Bank or its affiliate acts as a fiduciary with discretionary authority over the management of the assets involved in covered transactions (whether or not any such authority has been delegated to an unaffiliated sub-adviser).

(k) The term "pooled fund" means a collective investment fund or a pooled arrangement: (1) That is deemed to hold "plan assets" (within the meaning of section 3(42) of the Act and the regulations thereunder), (2) that holds assets of at least two or more unrelated employee benefit plans within the meaning of section 3(3) of the Act or plans within the meaning of section 4975(e)(1) of the Code, and (3) for which Deutsche Bank or its affiliate acts as fiduciary with discretionary authority over the management of its assets (whether or not any such authority has been delegated to an unaffiliated sub-adviser).

(l) The term "restricted pooled fund" refers to a pooled fund (1) that is sponsored and managed by Deutsche Bank or an affiliate, (2) in which the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent 20% or more (determined as of the last day of each month) of the total invested assets of such pooled fund, and (3) for which Deutsche Bank or an affiliate will appoint an independent fiduciary, as described in Section V(o) below, to represent the interests of all plans investing in such fund.

(m) The term "unrestricted pooled fund" refers to a pooled fund that (1) is sponsored and managed by Deutsche Bank or an affiliate and (2) in which the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent less than 20% (determined as of the last day of each month) of the total invested assets of such pooled fund.

(n) The term "unrelated pooled fund" refers to a pooled fund that is not sponsored by Deutsche Bank or an affiliate, but is managed by either of these entities.

(o) The term "independent" as used in the term "independent fiduciary" means—

(1) In the case of a client plan whose assets are held in a separately managed account or an unrelated pooled fund, a plan fiduciary or the named fiduciary of a pooled fund, or a fiduciary appointed by the named fiduciary that is unrelated to, and independent of, Deutsche Bank and it affiliates. For purposes of this exemption, a plan fiduciary will be deemed to be unrelated to, and independent of, Deutsche Bank if neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of Deutsche Bank and such fiduciary represents that it will advise Deutsche Bank or its affiliate if those facts change, or

(2) In the case of the fiduciary required under Section II(h), in connection with an in-house plan or in connection with a restricted pooled fund, an individual or company is qualified and independent of Deutsche Bank and its affiliates if such individual or company: (i) Has at least 10 years experience in the financial services business and significant experience in foreign currency trading and pricing, and (ii) certifies that the gross income received from Deutsche Bank and its affiliates for the current year does not exceed 5% of such fiduciary's gross income from all services for the prior fiscal year. The independent fiduciary shall represent to Deutsche Bank that such fiduciary is aware of its ERISA duties and responsibilities in acting as a fiduciary with respect to an in-house plan or a restricted pooled fund and the covered transactions.

(3) In the case of an unrestricted pooled fund, the persons described in Section V(o)(1) or (2).

(4) Notwithstanding anything to the contrary in this Section V(o), a plan fiduciary is not independent if—

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Deutsche Bank, other than described herein;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from Deutsche Bank for his own personal account in connection with any transaction described in this exemption in excess of the 5% gross income limitation set forth in Section V(o)(2)above;

(iii) Any officer, director or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of Deutsche Bank or an affiliate responsible for the transactions described in Section I is an officer, director or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the client plan sponsor, the sponsor of an unrelated pooled fund, or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the client plan sponsor, the sponsor of an unrelated pooled fund, or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of Deutsche Bank or an affiliate as the investment manager/adviser for the client plan or unrelated pooled fund and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section V(o)(4)(iii) shall not apply.

(p) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(q) The term "foreign exchange" transaction means the exchange of the currency of one nation for the currency of another nation.

(r) The term "less developed currencies" means those currencies in which the global custodian does not make a market at the time of the transaction and in which the global custodian determines to purchase from or sell to the plan's or pooled fund's local subcustodian on behalf of a plan or pooled fund because the currency is difficult to trade, undeveloped or the subject of local government restrictions, or because of the volatility or lack of liquidity in the market at the time of the transaction. The term "less developed currencies" does not include the following currencies: The Euro; the British pound; the Swiss franc, the Canadian dollar; or the Japanese yen.

(s) The term "trade-related currency conversion" means the conversion of trade-related items (i.e., amounts necessary for purchases or proceeds

from sales) into foreign currency or into U.S. dollars in order to permit purchase transactions to settle, and to permit proceeds of sales to be deployed in other investments or to be used to make distributions.

(t) The term "income item conversions" means the conversion of income items (e.g., interest, dividends, tax reclaims or other distributions) denominated in a foreign currency into U.S. dollars or another foreign currency.

Effective Date: This exemption is effective as of July 8, 2008.

Written Comments

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments and/or requests for a hearing on the pending exemption on or before August 22, 2008. During the comment period, the Department received one written comment letter and no requests for a public hearing. The comment was submitted by the Applicant, and it is intended to clarify the operative language and the Summary of Facts and Representations of the proposed exemption in a number of areas or to confirm their validity. A discussion of the comments and the responses made by the Department is presented below.

A. Clarifications to the Operative Language [2]

1. *Large Pooled Fund and Small Pooled Fund/Word Substitutions.* Section II(h) of the proposed exemption states that Deutsche Bank or its affiliate will appoint an independent fiduciary to represent the interests of (a) an in-house plan or (b) plans investing in a "large pooled fund." The Applicant explains that the term "large pooled fund" may be misleading since what is relevant is not the size of the fund but the level of in-house plan investment in such fund. Therefore, the Applicant requests that the Department change the term to "restricted pooled fund." Similarly, the Applicant requests that the Department revise the term "small pooled fund" to "unrestricted pooled fund."

In response to this comment, the Department has substituted the terms "restricted pooled fund" and "unrestricted pooled fund" for the terms "large pooled fund" and "small pooled fund" in the final exemption.

2. *Investment Decisions by Independent Fiduciary or Applicant.* Section II(i) of the proposed exemption requires that the decision by an independent fiduciary of a client plan, an in-house plan, a large pooled fund (redesignated herein as a "restricted pooled fund") and unrelated pooled funds to invest in a given market and to select Deutsche Bank or an affiliate as asset manager is part of an investment strategy that is adopted by such fiduciary. The Applicant requests that the Department clarify that this condition requires nothing more than the authorization specified in Section III(b) of the proposal. The Applicant points out that in all instances, the decision to invest in a given market is made by Deutsche Bank or an affiliate, as asset manager, and not by the independent fiduciary. While a plan's independent fiduciary decides on a general investment strategy (e.g., emerging markets debt), the Applicant points out that such fiduciary may or may not know the countries to which plan assets may be committed. The Applicant also explains that the decision to commit plan assets to a particular country and in what amounts are decisions made by the discretionary investment manager, which is Deutsche Bank or an affiliate. Further, in the context of an in-house plan or a restricted pooled fund, the Applicant states that the decision to appoint Deutsche Bank or an affiliate, as asset manager, is made by Deutsche Bank or an affiliate, and not by an independent fiduciary.

In response to this comment, the Department has revised Section II(i) of the final exemption to clarify that the decision to select Deutsche Bank or an affiliate as asset manager is made by the independent fiduciary of a client plan whose assets are held in a separately managed account or the independent fiduciary of an unrelated pooled fund.

3. *Parties to Receive Notice from the Responsible Reviewing Individual/Word Substitutions.* Section II(l)(3) of the proposal describes the parties that are to be notified by the responsible reviewing individual as to its determination whether the covered transactions have been executed in accordance with the terms and conditions of the exemption. Among the persons who are designated in the proposed exemption as recipients of periodic written reports from the responsible reviewing individual are "Deutsche Bank or its affiliate, the independent fiduciary of a client plan whose assets are held in a separately managed account, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, or the receiving fiduciary of a small pooled fund." The Applicant requests that Section II(l)(3) of the proposed exemption be modified to reflect the substitution of the term "large" with "restricted" and the term "small" with "unrestricted," as appropriate, in the context of the term "pooled fund." The Applicant also asks that the term "receiving fiduciary" for an unrestricted pooled fund, as defined in Section V(q) of the proposal and as used in Section II(l)(3) be stricken because the responsible reviewing individual will notify the independent fiduciary of each plan investing in an unrestricted pooled fund directly.

In response to this comment, the Department has made the requested modifications to Section II(l)(3), and deleted Section V(q) of the proposal. The Department has also made corresponding revisions to Section III(a) and Section IV(c)(1)(ii) where these terms appear, as well.

4. *Written Disclosures Provided to the Independent Fiduciary.*

Section II(l)(3) of the proposal requires that the responsible reviewing individual notify Deutsche Bank, the independent fiduciary of each client plan whose assets are held in a separately managed account, the independent fiduciary of an in-house plan and any restricted pooled fund required under II(h), the independent fiduciary of unrelated pooled fund, and the independent fiduciary of each plan investing in an unrestricted pooled fund, of its findings in a written report within 90 days following the period to which the periodic review relates. Such report is to be completed annually. The Applicant states in the preamble to the proposed exemption (in the last paragraph of Representation 30) that within 90 days of a request by the independent fiduciary, Deutsche Bank must provide written compliance reports. The Applicant notes that the operative language does not contain this condition. The Applicant believes that such reports, would be duplicative of those required by Section II(l) and be overly burdensome. In response to this comment, the Department concurs with the Applicant, and notes that the exemption does not require additional reports other than those described in II(l)(3).

In addition, Section III(a)(4) of the proposed exemption states that Deutsche Bank or an affiliate is required to provide written disclosure to an independent fiduciary of the list of markets in which plans or pooled funds invest where Deutsche Bank or its affiliate serves as a subcustodian. Representation 30(e) of the Summary of Facts and Representations adds that

[2] The clarifications discussed in this section are also meant to include modifications to the Summary of Facts and Representations of the proposal.

disclosure must be provided as to whether a particular market is served by more than one subcustodian. The Applicant requests confirmation that this additional disclosure is not required because it will not have access to this information.

The Department concurs with the Applicant's comment and clarifies that disclosure of whether a particular market is served by more than one subcustodian is not required.

5. *Negative Consent by the Independent Fiduciary.* As stated briefly above, Section III(b) of the proposed exemption states that if the independent fiduciary fails to object in writing to Deutsche Bank or its affiliate within 30 days following the receipt of information concerning the investment of a plan or a pooled fund assets in foreign investments that may require the execution of foreign exchange transactions by Deutsche Bank or its affiliates as subcustodians, then such fiduciary's authorization of the contemplated arrangement will be presumed. The Applicant suggests that at the end of Section III(b), in order to clarify what happens if an independent fiduciary objects, the following language should be inserted:

> The independent fiduciary required under Section II(h) shall not have any authority under this section. With respect to pooled funds, in the event the independent fiduciary submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to so withdraw, the withdrawal shall be affected prior to the implementation of a material change in the arrangement, but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

In response to this comment, the Department has determined to make some of the changes requested by the Applicant by adding a new condition designated as Section III(d). However, the Department has determined not to adopt the exclusionary language appearing in the first sentence of the above-referenced text, as suggested by the Applicant, which pertains to the independent fiduciary required under Section II(h) because of the independent fiduciary's critical role in protecting an in-house plan or a restricted pooled fund by taking all actions that are necessary and proper on behalf of such plan or pooled fund. Section III(d) of the final exemption reads as follows:

> With respect to pooled funds, in the event the independent fiduciary of a client plan submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, a material change in or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to so withdraw, the withdrawal shall be effected prior to the implementation of a material change in the arrangement, but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

6. *Access to Records by Participants and Beneficiaries.* Section IV(c)(1)(iii) of the proposed exemption permits any participant or beneficiary of a plan or a pooled fund, the assets of which are involved in foreign exchange transactions pursuant to the exemption to have access to the records that the exemption, requires Deutsche Bank to maintain. The Applicant has requested that the Department delete Section IV(c)(1)(iii) and the reference to such subsection in Section IV(c)(2) because the requirement is burdensome. The Department continues to believe that the participants and beneficiaries in plans or pooled funds should have access to the required records, and accordingly, has decided not to make the requested changes.

7. *Affiliate Definition.* Section V(b) of the proposed exemption defines the term "affiliate" of Deutsche Bank as "any domestic or foreign bank or broker-dealer directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank." The Applicant has requested that this definition be expanded to include: "any domestic or foreign investment adviser that is, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank." According to the Applicant, this addition will ensure that the exemption is available where an affiliate of Deutsche Bank, which is a bank, broker-dealer or investment adviser, acts as asset manager, rather than Deutsche Bank, itself.

The Department has determined not to make the Applicant's requested change because it greatly expands the scope of the relief proposed without an opportunity for notice and comment by interested persons.

8. *Global Custodian Definition.* Section V(f) of the proposed exemption defines the term "global custodian" as follows:

> The term "global custodian" means a bank or broker-dealer that is unrelated to Deutsche Bank or its affiliate, which is selected by (1) the named fiduciary of a client plan; (2) the sponsor (other than Deutsche Bank or its affiliate) of an unrelated pooled fund; (3) Deutsche Bank or its affiliate in the case of an in-house plan; or (4) Deutsche Bank or its affiliate in the case of a pooled fund established by Deutsche Bank or an affiliate, for the purpose of holding and safeguarding all assets of the client plan, in-house plan, or pooled fund, physically or through a depository, through its branches or through its subcustodian network.

For clarity, the Applicant requests that Section V(f)(1) of the definition be modified by substituting the term "named" with the term "independent" because Deutsche Bank will not know whether the plan fiduciary selecting the global custodian is actually a named fiduciary because such plan fiduciary may be the trustee or some other fiduciary to whom a named fiduciary has delegated appropriate authority. In response to this comment, the Department has made the requested change.

In addition, the Applicant requests that, in the last clause of Section V(f), the word "all" be deleted because some plans or funds may have more than one global custodian. Further, the Applicant suggests that the last clause of Section V(f) the phrase "a depository" be substituted with the phrase "securities depositories, foreign clearing agencies or other entities which act as securities depositories." According to the Applicant, this will ensure consistency with Section V(g) of the exemption which utilizes the latter language. The Department concurs with the Applicant's suggested revisions and has made the changes in the final exemption.

In addition, at the Applicant's recommendation, the Department has modified Section V(f) of the final exemption by clarifying that the term "unrelated," as used therein, means that "the global custodian will be unrelated to Deutsche Bank or its affiliates if the global custodian is not controlling, controlled by or under common control with Deutsche Bank, directly or indirectly through one or more intermediaries." Thus, the revised definition of the term "global custodian" is set forth as follows:

> The term "global custodian" means a bank or broker-dealer that is unrelated to Deutsche

Bank or its affiliate, which is selected by (1) the independent fiduciary of a client plan in the case of a separately managed account; (2) the sponsor (other than Deutsche Bank or its affiliate) of an unrelated pooled fund; (3) Deutsche Bank or its affiliate as asset manager in the case of an in-house plan; or (4) Deutsche Bank or its affiliate as asset manager in the case of a pooled fund established by Deutsche Bank or an affiliate, for the purpose of holding and safeguarding the assets of the client plan, in-house plan, or pooled fund, physically or through securities depositories, foreign clearing agencies or other entities which act as securities depositories, through its branches or through its subcustodian network. For purposes of Section V(f) only, the global custodian will be unrelated to Deutsche Bank or its affiliates if the global custodian is not controlling, controlled by or under common control with Deutsche Bank, directly or indirectly through one or more intermediaries.

9. *In-House Plan Definition.* Section V(i) of the proposed exemption defines the term "in-house plan" as a "plan sponsored by Deutsche Bank or any person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank." The Applicant has requested that the Department adopt the following language as the new definition of "in-house plan" in order to maintain consistency with the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (PTE 96–23) (61 FR 15975, 15982 (April 10, 1996):

> The term "in-house plan" means a plan sponsored by Deutsche Bank or any affiliate. For purposes of the foregoing only, "affiliate" means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which Deutsche Bank is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which Deutsche Bank is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) or the rules thereunder."

The Department notes that the Applicant's suggested definition of "in-house plan," which is taken from PTE 96–23 would limit certain plans from being considered "in-house plans" as these plans would not come within the proposed definition. Therefore, the Department has not adopted the requested change. Instead, the Department has modified the definition of "in-house plan" as follows:

> The term "in-house plan" means an employee benefit plan as described in section 3(3) of the Act, or a plan as described in section 4975(e)(1) of the Code, that is sponsored by Deutsche Bank or any person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank.

10. *Client Plan Definition.* Section V(j) of the proposed exemption defines the term "client plan" as "an employee benefit plan, other than a plan sponsored by Deutsche Bank, as described in section 3(3) of the Act or section 4975(e)(1) of the Code with respect to which Deutsche Bank or its affiliate acts as a fiduciary having full investment discretion." The Applicant has requested that the definition of "client plan" be modified as follows:

> The term "client plan" means an employee benefit plan, as described in section 3(3) of the Act, or a plan, as described in section 4975(e)(1) of the Code, other than an in-house plan, with respect to which Deutsche Bank or its affiliate acts as a fiduciary with discretionary authority over the management of the assets involved in covered transactions (whether or not any such authority has been delegated to an unaffiliated sub-adviser).

The Applicant states that the revised definition clarifies Deutsche Bank's role with respect to plan assets because the meaning of the phrase "full investment discretion," as used in the client plan definition, is unclear. In addition, the Applicant states that the modification ensures that separately managed accounts that are sub-advised by a third party are included within the scope of exemptive relief.

In response to this comment, the Department has made the Applicant's requested revision in the final exemption.

11. *Pooled Fund Definition.* Section V(k) of the proposed exemption defines the term "pooled fund" as follows:

> The term "pooled fund" means a collective investment fund or a pooled arrangement established for investment on behalf of two or more unrelated employee benefit plans by Deutsche Bank or an affiliate or by a fund sponsor other than Deutsche Bank or an affiliate for which Deutsche Bank or its affiliate acts as fiduciary with full investment discretion. The assets of a pooled fund may include the assets of (i) client plans, (ii) in-house plans of Deutsche Bank or an affiliate, (iii) other pooled funds in which Deutsche Bank or an affiliate is not the fund sponsor, and (iv) other pooled funds in which Deutsche Bank or an affiliate is the fund sponsor.

The Applicant has suggested that this definition be deleted in its entirety and replaced with the following definition:

> The term "pooled fund" means a collective investment fund or a pooled arrangement—(1) that is deemed to hold "plan assets" (within the meaning of section 3(42) of Act and the regulations thereunder), (2) that holds assets of at least two or more unrelated employee benefit plans within the meaning of section 3(3) of Act or plans within the meaning of section 4975(e)(1) of the Code, and (3) for which Deutsche Bank or its affiliate acts as fiduciary with discretionary authority over the management of its assets (whether or not any such authority has been delegated to an unaffiliated sub-adviser).

The Applicant believes that the requested change provides clarification that the exemption applies to pooled funds only when they are deemed to hold plan assets. Moreover, the Applicant states that the revised definition acknowledges that non-plan investors may be invested in pooled funds that hold plan assets. In response to this comment, the Department has made the requested change.[3]

12. *Large Pooled Fund Redefined/Word Substitution.* Section V(l) of the proposed exemption defines the term "large pooled fund" as follows:

> The term "large pooled fund" refers to a pooled fund that is sponsored and managed by Deutsche Bank or an affiliate. A large pooled fund may include the assets of (i) client plans, (ii) in-house plans of Deutsche Bank or an affiliate, (iii) other pooled funds in which Deutsche Bank or an affiliate is not the fund sponsor, and (iv) other pooled funds in which Deutsche Bank or an affiliate is the fund sponsor. In a large pooled fund, the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent more than 20% of the total invested assets of such fund. Also, in a large pooled fund, Deutsche Bank will appoint an independent fiduciary, as described in Section V(o) below, to represent the interests of all plans investing in such fund.

The Applicant has requested that the term "large pooled fund" be changed to "restricted pooled fund" as it appears throughout the proposed exemption and as defined in Section V(l). In the Applicant's view, the modified language more accurately describes this term.

In response to this comment, the Department has replaced the term "large pooled fund" with "restricted pooled fund" throughout the operative language of the final exemption. The Department also notes the corresponding changes to the Summary of Facts and Representations.

In addition, the Applicant has requested that the definition of the term "large pooled fund" be replaced with the following new definition:

> The term "restricted pooled fund" refers to a pooled fund (i) that is sponsored by Deutsche Bank or an affiliate, (ii) in which the total invested assets of an in-house plan (or in-house plans), if aggregated (whether

[3] For consistency in the formatting of the final exemption, the Department has also replaced the romanettes with numbers for the investment vehicles defined in Comments 11–13 above.

invested directly or indirectly through another pooled fund), represent 20% or more (determined as of the last day of each month) of the total invested assets of such pooled fund, and (iii) for which Deutsche Bank or an affiliate will appoint an independent fiduciary, as described in Section V(o) below, to represent the interests of all plans investing in such fund.

The Applicant states that the revised definition omits the reference to Deutsche Bank's management because the revised definition of "pooled fund" already references Deutsche Bank's management. In addition, the Applicant explains that the revised definition acknowledges that non-plan investors often invest in pooled funds that hold plan assets and requires monthly testing of the level of in-house plan investment.

The Department concurs, in part, with the Applicant's revised definition of the term "restricted pooled fund." However, the Department has decided to leave the reference to Deutsche Bank's or its affiliate's management authority intact in the final exemption in order to emphasize that Deutsche Bank or its affiliate sponsors the restricted pooled fund and has discretion over the assets of such pooled fund. Therefore, the revised definition of the term restricted pooled fund reads as follows:

The term "restricted pooled fund" refers to a pooled fund (1) that is sponsored and managed by Deutsche Bank or an affiliate, (2) in which the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent 20% or more (determined as of the last day of each month) of the total invested assets of such pooled fund, and (3) for which Deutsche Bank or an affiliate will appoint an independent fiduciary, as described in Section V(o) below, to represent the interests of all plans investing in such fund.

13. *Small Pooled Fund Redefined/ Word Substitution.* Section V(m) of the proposed exemption defines the term "small pooled fund" as follows:

The term "small pooled fund" refers to a pooled fund that is sponsored and managed by Deutsche Bank or an affiliate. A small pooled fund may include the assets of (i) client plans, (ii) in-house plans of Deutsche Bank or an affiliate, (iii) other pooled funds in which Deutsche Bank or an affiliate is not the fund sponsor, and (iv) other pooled funds in which Deutsche Bank or an affiliate is the fund sponsor. In a small pooled fund, the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or through another pooled fund), represent less than 20% of the total invested assets of such fund.

The Applicant has requested that the term "small pooled fund" be changed to "unrestricted pooled fund." Also, for the same reasons expressed above by the Applicant for modifying the term "large pooled fund," the Applicant requests that Section V(m) be revised to the following:

The term "unrestricted pooled fund" refers to a pooled fund that (1) is sponsored by Deutsche Bank or an affiliate and (2) in which the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent less than 20% (determined as of the last day of each month) of the total invested assets of such pooled fund.

The Department concurs with the Applicant's revised definition of the term "unrestricted pooled fund," with the exception of deleting the reference to Deutsche Bank or its affiliate managing the fund, and has made appropriate changes in the final exemption. The revised definition reads as follows:

The term "unrestricted pooled fund" refers to a pooled fund that (1) is sponsored and managed by Deutsche Bank or an affiliate and (2) in which the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent less than 20% (determined as of the last day of each month) of the total invested assets of such pooled fund.

B. Confirmations

1. *Fee Disclosures.* The Applicant points out that in the proposed exemption, Representation 30(c) of the Summary of Facts and Representations provides for the disclosure of all fees Deutsche Bank or its affiliate may receive as a result of the covered transactions. However, the Applicant notes that there is no such requirement in the operative language of the proposal. The Applicant explains that the proposed exemption only requires that Deutsche Bank or its affiliate retain records that specify the price at which the transaction occurred, which is acceptable to the Applicant. Therefore, the Applicant requests that the final exemption reflect that the disclosure of "all fees" should not be required, but that the rate and other market information should be required.

The Department does not concur with the Applicant's reasoning. To the extent Deutsche Bank or its affiliate are able to make appropriate fee disclosures to independent fiduciaries without undue burden, the Department would require Deutsche Bank or its affiliate to provide this information.

2. *Exemptive Relief for the Global Custodian.* The Applicant has asked the Department to confirm that no exemptive relief is necessary if the global custodian makes a market in a particular currency and executes the foreign exchange transaction as principal. The Applicant explains that although a global custodian would be engaged in a principal transaction, it might receive a ticket charge, as it would for any transaction. However, the Applicant believes that it is very unlikely that the global custodian would receive a ticket charge given that the plan would be engaging in a foreign exchange transaction through the global custodian's custody network. The Applicant also emphasizes that because it is unaware of the policies of each global custodian, it can only make generalized assertions about such policies.

In response to this comment, the Department believes that this comment is beyond the scope of the exemption. The Department notes that exemptive relief may be available for the global custodian under section 408(b)(18) of the Act to the extent the conditions therein are satisfied.[4]

3. *Application of Foreign Laws.* The Applicant has requested the Department to confirm that Section II(k) does not preclude the application of foreign laws. Section II(k) of the exemption requires that:

Foreign affiliates of Deutsche Bank which engage in the covered transactions—

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to service of process on the Process Agent;

[4] Section 408(b)(18) of the Act is a statutory exemption that was enacted under the Pension Protection Act of 2006. This statutory exemption provides relief from section 406(a) of the Act and limited relief from section 406(b) of the Act for custodians or trustees with respect to foreign exchange transactions between a bank or broker-dealer (or an affiliate of either) and a plan with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary or other party in interest if,—(1) the transaction is in connection with the purchase, holding or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets); (2) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or an affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties; (3) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency; and (4) the bank or broker-dealer (or any affiliate of either) does not have investment discretion or provide investment advice with respect to the transaction.

(4) Agree that they may be sued in the United

States Courts in connection with the covered transactions described in this proposed exemption;

(5) Agree that any judgment on behalf of a plan or pooled fund may be collected in the United States from Deutsche Bank; and

(6) Agree to comply with, and be subject to, all relevant provisions of the Act.

In response, the Department notes that this section does not preclude the application of foreign laws, but rather provides a means for a plan to seek a judgment in the courts of the United States if a claim arises in connection with the covered transactions. In addition, to the extent those foreign laws preclude a foreign affiliate of Deutsche Bank from meeting the conditions of the exemption, such affiliate may not rely on the relief provided by this exemption.

4. *Development of Policies and Procedures by Global Custodian.* The Applicant requests that the Department confirm that Section III(a) does not require the global custodian to develop any special policies and procedures regarding the handling of foreign exchange transactions for plans or pooled funds with respect to which Deutsche Bank or its affiliate is a fiduciary or disclose to Deutsche Bank the factors that the global custodian considers in its selection of a subcustodian.

In response to this comment, the Department notes that the requirements of Section III(a) relate exclusively to the information that Deutsche Bank must provide to certain designated persons.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published in the **Federal Register** on July 8, 2008 at 73 FR 39158. For further information regarding the Applicant's comment letter or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application files (Exemption Application Nos. D–11082 and D–11109) the Department is maintaining in this case. The application files, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The Applicant's comment letter may also be viewed online at *http://www.regulations.gov*, at Docket ID Number: EBSA–2008–0006.

Accordingly, after giving full consideration to the entire record, including the Applicant's comment letters and supplements, the Department has decided to grant the exemption.

For Further Information Contact: Allison Padams-Lavigne, U.S. Department of Labor, telephone (202) 693–8564. (This is not a toll-free number.)

State Street Bank and Trust Company; Located in Massachusetts

[Prohibited Transaction Exemption No. 2010–02; Application No. D–11522.]

Exemption

The restrictions of sections 406(a)(1)(A) and (D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), (E), and (F) of the Code, shall not apply as of October 24, 2008, to the cash sale of certain mortgage, mortgage-related, and other asset-backed securities for $2,447,381,010 (the Sale) by stable value commingled funds and separate accounts both holding assets of employee benefit plans (the Accounts) to State Street Bank and Trust Company (State Street), the investment manager and/or trustee for the Accounts, provided that the conditions set forth below are met.

(a) The Sale was a one-time transaction for cash payment made on a delivery versus payment basis.

(b) The Accounts did not bear any commissions or transaction costs in connection with the Sale.

(c) The Accounts received as a purchase price for the securities an amount which, as of the effective date of the Sale, was equal to the fair market value of the securities, determined by reference to prices provided by independent third-party pricing sources consulted in accordance with pricing procedures used by the Accounts prior to the transaction.

(d) In connection with the Sale, State Street transferred to and allocated among the Accounts cash in the amount of $450,000,000.

(e) At the time of the transaction, State Street, as trustee of the Accounts, determined (except with respect to the State Street Salary Savings Program, an employee benefit plan maintained for employees of State Street and certain affiliates (the State Street Plan)) that the Sale was appropriate for and in the best interests of the Accounts and the employee benefit plans invested in the Accounts. An independent fiduciary determined at the time of the transaction that the Sale was appropriate for and in the best interest of the State Street Plan and its participants and beneficiaries.

(f) An independent consultant reviewed, after the Sale, the reasonableness of the prices used to purchase the securities, and concluded that the pricing methodology used by State Street provided a reasonable basis for determining the fair market value of the securities and that the methodology was reasonably applied with only immaterial deviations.

(g) In carrying out the Sale, State Street took all appropriate actions necessary to safeguard the interests of each Account and each employee benefit plan with a direct or indirect interest in an Account.

(h) State Street and its affiliates, as applicable, will maintain, or cause to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the persons described below in paragraph (i)(i) to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a plan which engaged in the covered transaction, other than State Street and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (i) below; and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of State Street or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(i)(i) Except as provided below, in paragraph (ii), and notwithstanding any provisions of subsections (a)(2) and (b) of sections 504 of the Act, the records referred to in paragraph (h) above, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, the Securities and Exchange Commission or the Federal Reserve Board;

(B) Any fiduciary of any plan that engaged in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described above in subparagraphs (B)–(D) of paragraph (i)(i) are authorized to examine the trade secrets of State Street or commercial or financial information that is privileged or confidential.

(iii) Should State Street refuse to disclose information on the basis that such information is exempt from disclosure, State Street shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

The Department received one comment regarding the proposed exemption. At the Department's request, State Street submitted a response to the comment. A discussion of the commenter's assertions, State Street's responses, and the Department's views follows.

The commenter first stated that State Street failed to disclose certain information to the Department. Specifically, the commenter cited several news items reporting on litigation involving State Street that the commenter believed to be relevant to the pending exemption. The commenter also asserted that State Street concealed certain matters from the Department, most notably, the fact that the SEC had issued a "Wells Notice" to State Street, indicating that the staff of the SEC is recommending enforcement action against the company for violations of the antifraud provisions of the federal securities laws, relating to the disclosure and management of State Street's active fixed income strategies during 2007 and prior periods.[5] Finally, the commenter stated that State Street had not provided all the information required by the Department's regulations at 29 CFR 2570.34 and 35. The commenter indicated that the application did not include required contact information about individual plans affected by the exemption.

In addition, the commenter took the position that the criteria established under section 408(a) of ERISA for the grant of an exemption would not be satisfied with respect to the pending exemption, in that the exemption would not serve the interests of the affected plans and their participants and beneficiaries.[6] The commenter stated that the exemption would "paper[] over information that would enable the Named Plans and their respective participants and beneficiaries to pursue the fiduciary for additional underlying breaches." Further, the commenter asserted that participants in the State Street Salary Savings Program who were invested in the State Street Company Stock Fund saw the value of their accounts decline as a result of actions taken by State Street management at the time of the transaction that is the subject of the proposed exemption. The commenter requested that the Department hold a public hearing, or, alternatively, require State Street to disclose all pending lawsuits filed by employee benefit plans, as well as the contact information and employer identification number for all plans invested in any fund cited in the application, as well as certain other State Street funds.

In response, State Street stated that the news items identified by the commenter are not relevant to the transaction covered by the proposed exemption. In that regard, State Street pointed out that the news items did not involve funds affected by the proposed exemption, and pertain to events that occurred after the publication of the proposed exemption. State Street noted that the SEC Wells Notice was disclosed to the Department on July 8, 2009, and also was generally available as part of a public filing. State Street asserted that the other matters omitted from the application are not relevant to the Department's consideration of the proposed exemption. State Street stated that it believes it satisfied the requirements of the Department's regulations with respect to disclosures in its application.

The Department has carefully considered the issues raised by the commenter and the Applicant's responses. The Department does not believe that any of the news items or allegedly concealed or omitted matters would have materially affected the Department's decision to propose, and ultimately, grant the exemption.[7]

With respect to plan contact information, the Department requested and the Applicant agreed to supplement its application with contact information for affected plans that were managed in separate accounts. As to plans invested in pooled funds, the Department's regulations at 29 CFR 2570.35 require disclosure of information with respect to the pooled funds as opposed to individual investing plans. See 29 CFR 2570.35(c)(2). State Street's original application provided the employer identification number for the pooled funds. Because the pooled funds are sponsored by State Street, the Department does not believe it is necessary to have additional contact information on file for the pooled funds.

Finally, the Department has determined that the exemption does satisfy the criteria established in section 408(a) of ERISA, including the requirement that the exemption be in the interests of the affected plans and their participants and beneficiaries. The Department does not believe that the grant of the exemption will undermine any rights that a plan participant or beneficiary might have against State Street as fiduciary. The Department's view is that by purchasing distressed securities (the Selected Assets) and making an additional cash infusion into the affected Accounts, State Street took actions designed to protect the interests of the plans invested in those Accounts. The Department believes that the Applicant was persuasive in arguing that it was necessary to remove the Selected Assets from the Accounts in order to reduce the likelihood that the wrap providers would terminate their contracts, thereby depriving the Accounts of "book value" treatment of plan investments. In this regard, the Department notes that the identification of the Selected Assets was confirmed by an independent consultant. In addition, the sale price of the Selected Assets was determined by independent third party pricing services and confirmed as reasonable by an independent consultant.[8]

[5] The commenter identified two other matters that State Street had omitted from its application: First, that a partner in the law firm that represented State Street with respect to the exemption application, Ropes & Gray, was a member of State Street's Board of Directors and was chairman of its Executive Committee during the relevant time period; and second, that State Street sought a regulatory exemption from the SEC in 2002 with respect to the types of securities that could be used as collateral in securities lending transactions.

[6] Section 408(a) of ERISA provides that an exemption may not be granted unless the Secretary of Labor finds that the exemption is: "(1) administratively feasible, (2) in the interests of the plan and of its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plan."

[7] The Department notes that the SEC Wells Notice was disclosed to the Department as stated by the Applicants.

[8] The commenter suggested that the Department deny the exemption, thereby requiring State Street to pay an excise tax pursuant to section 4975 of the Internal Revenue Code, so that "State Street's incumbent management will face intra-corporate measures to remove bad managers and executives." The Department notes that if the exemption were denied, not only would State Street be required to pay an excise tax under section 4975 of the Code, it also would be required to "correct" the transaction, possibly by returning the Selected

The Department has determined not to hold a public hearing with respect to the proposed exemption. The Department's regulations provide that a hearing will be held where necessary to fully explore material factual issues identified by the person requesting the hearing. See 29 CFR 2570.46. In this case, the Department concludes that the commenter has not identified any material factual issues that would require a hearing.

With respect to the additional disclosure requested by the commenter, the Department's regulations require disclosure of much of the information requested by the commenter, including lawsuits against the applicant concerning the applicant's conduct as a fiduciary or party in interest with respect to any plan, as well as contact information/EIN for affected plans or pooled funds. The Department believes that the additional disclosure requested by the commenter regarding plans that are not affected by the exemption is beyond the scope of the Department's exemption procedure regulation and this proceeding.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has determined to grant the exemption. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 25, 2009, at 74 FR 49031.

For Further Information Contact: Karen E. Lloyd of the Department, at (202) 693–8554. This is not a toll-free number.

The Bank of New York Mellon (BNY Mellon or the Applicant) Located in New York, NY

[Prohibited Transaction Exemption 2010–03; Exemption Application No. D–11571.]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of February 20, 2009, to the cash sale of certain floating rate securities (the Securities) issued by Lehman Brothers Holdings, Inc. or its affiliates (together, Lehman) for an aggregate purchase price of $235,737,419.05 by the EB Temporary Investment Fund—Lehman (Liquidating Fund), the EB SMAM Short Term Investment Fund—Lehman (Liquidating Fund), the DF Temporary Investment Fund—Lehman (Liquidating Fund) and the Pooled Employee Daily Liquidity Fund—Lehman (Liquidating Fund) (collectively, the Liquidating Funds) to the Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Liquidating Funds. This exemption is subject to the following conditions:

(a) The sale was a one-time transaction for cash;

(b) The Liquidating Funds received an amount for the sale of the Securities, which was equal to the sum of (1) The par value of the Securities plus (2) accrued but unpaid interest through September 12, 2008, determined at the contract rate, plus (3) accrued and unpaid interest from September 15, 2008 through the earlier of (i) the date of sale or (ii) the maturity date of the Securities, determined at the investment earnings rate of the collective fund from which the Securities were transferred to the Liquidating Fund for the period from September 15, 2008 to the earlier of the maturity date of the Security or February 20, 2009;

(c) The Liquidating Funds did not bear any commissions, fees, transaction costs or other expenses in connection with the sale of the Securities;

(d) BNY Mellon, as trustee of the Liquidating Funds, determined that the sale of the Securities was appropriate for and in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, the issuer of the Securities, or from any third party, an aggregate amount that is more than the sum of:

(1) the purchase price paid for the Securities by BNYMC; and

(2) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published interest rate on the Securities preceding the Lehman's bankruptcy filing, BNYMC refunds such excess amount promptly to the Liquidating Funds (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than BNY Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1);

(2) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BNY Mellon or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(h)(1) Except as provided, below, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above, in paragraph (h)(1)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the

Assets to the Accounts. The Department does not believe that this would be a favorable result for the Accounts and their investing plans.

close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 16, 2009 at 74 FR 58992.

For Further Information Contact: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of February, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–3445 Filed 2–22–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11514]

Citigroup Inc. and Its Affiliates (Citigroup or the Applicant); Subaru of America, Inc. (Subaru); and The Bank of New York Mellon (BNY Mellon); et al.; Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No., _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "*moffitt.betty@dol.gov*", or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Citigroup Inc. and Its Affiliates (Citigroup or the Applicant), Located in New York, New York

[Application No. D–11514.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and

in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Sales of Auction Rate Securities From Plans to Citigroup: Unrelated to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Citigroup, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Citigroup to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Citigroup for its own employees (a Citigroup Plan), the Unrelated Sale is made pursuant to a written offer by Citigroup (the Offer) containing all of the material terms of the Unrelated Sale. Either the Offer or other materials available to the Plan provide: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Citigroup, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Citigroup Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Citigroup. Notwithstanding the foregoing: (1) in the case of an IRA (as defined in Section V(e)) which is beneficially owned by an employee, officer, director or partner of Citigroup, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, the decision to accept the Offer may be made by Citigroup after Citigroup has determined that such purchase is in the best interest of the Citigroup Plan or pooled fund; [2]

(h) Except in the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, neither Citigroup nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Citigroup and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Citigroup and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Citigroup or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representative of such fiduciary; and

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Citigroup, or commercial or financial information which is privileged or confidential; and

(3) Should Citigroup refuse to disclose information on the basis that such information is exempt from disclosure, Citigroup shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Sales of Auction Rate Securities From Plans to Citigroup: Related to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Citigroup, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement

[1] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[2] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Citigroup for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by Citigroup of all relevant information.

Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the Offer does constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with Citigroup; the number of shares or par value of the Auction Rate Securities; the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(6) The timing for acceptance by Citigroup of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by Citigroup for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(9) The expiration date of the Offer;

(10) The fact that Citigroup may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Offer as Citigroup deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to the Plan;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

Section V. Definitions

For purposes of this proposed exemption:

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" or "ARS" means a security: (1) that is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of Citigroup if the person is: (1) not Citigroup or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term "Settlement Agreement" means a legal settlement involving Citigroup and a U.S. state or federal authority that provides for the purchase of an ARS by Citigroup from a Plan.

Effective Date: If granted, this proposed exemption will be effective as of February 1, 2008.

Summary of Facts and Representations

1. Citigroup Inc. is a holding company whose businesses provide a broad range of financial services to consumer and corporate customers around the world. As of June 30, 2008, Citigroup and its subsidiaries had total consolidated assets of approximately $2.1 trillion. Citigroup's consumer and corporate banking business is a global franchise encompassing, among other things, branch and electronic banking, consumer lending services, investment services, and credit and debit card services. Citigroup also provides securities trading, research, and brokerage services to consumer and corporate customers, primarily through its registered broker-dealer, Citigroup Global Markets Inc. Formerly, "Smith Barney" was the brand name used by Citigroup for its retail brokerage business, and Smith Barney had more than 15,000 financial advisors, located in approximately 800 offices across the United States, who served approximately 9.2 million domestic client accounts, representing approximately $1.5 trillion in assets.[3] In the ordinary course of its business, Citigroup provides a range of financial services to IRAs and pension, profit sharing and 401(k) plans qualified under section 401(a) of the Code under which some or all of the participants are employees described in section 401(c) of the Code. In this last regard, Citigroup acts as a broker and a dealer with respect to the purchase and sale of securities, including Auction Rate Securities.

2. The Applicant describes Auction Rate Securities and the arrangement by which ARS are bought and sold as follows. Auction Rate Securities are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers

[3] In May 2009, Morgan Stanley Smith Barney was formed as a joint venture (JV). Under the JV agreement, each of Citigroup and Morgan Stanley Inc. (Morgan Stanley) (including their respective subsidiaries) contributed specified businesses into the JV, together with all contracts, employees, property licenses and other assets (as well as liabilities) used primarily in the contributed businesses. Generally, in the case of Citigroup, the contributed businesses included Citigroup's retail brokerage and futures business operated under the name "Smith Barney" in the United States and Australia and operated under the name "Quilter" in the United Kingdom, Ireland and Channel Islands. Certain investment advisory and other businesses of Citigroup also were included. In the case of Morgan Stanley, the contributed businesses consisted generally of Morgan Stanley's global wealth management (retail brokerage) and private wealth management businesses. This exemption application covers transactions between Citigroup and Plan clients as of the period prior to the formation of the JV.

based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that, under a typical Dutch Auction process, Citigroup is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. Citigroup may place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (a) a failed auction (*i.e.,* an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate, resulting in no ARS being sold through the auction process); or (b) an auction from clearing at a rate that Citigroup believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, Citigroup has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Citigroup is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Citigroup. That agreement provides that Citigroup will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Citigroup.

5. The Applicant states further that Citigroup may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Citigroup, for those orders that Citigroup successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Citigroup act as dealer, such other broker-dealers may share auction dealer fees with Citigroup for orders submitted by Citigroup.

6. According to the Applicant, since February 2008, only a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.[4]

7. The Applicant represents that, in certain instances, Citigroup may have previously advised or otherwise caused a Plan to acquire and hold an Auction Rate Security.[5] In connection with Citigroup's role in the acquisition and holding of ARS by various Citigroup clients, including the Plans, Citigroup entered into Settlement Agreements with certain U.S. states and federal authorities. Pursuant to these Settlement Agreements, among other things, Citigroup was required to send a written offer to certain Plans that held ARS in connection with the advice and/or brokerage services provided by Citigroup. As described in further detail below, eligible Plans that accepted the Offer were permitted to sell the ARS to Citigroup for cash equal to the par value of such securities, plus any accrued interest and/or dividends. Specifically, pursuant to the relevant settlement, Applicant made an offer (the First Offer or an Offer) by letter dated October 3, 2008, to eligible customers who then maintained an account with Applicant to purchase all non-auctioning auction rate securities purchased by such eligible customers from Applicant on or before February 11, 2008 (Subject Securities). Eligible customers who wanted Applicant to purchase some or all of their auction rate securities by November 5, 2008 were required to notify Applicant of their desire to do so by October 21, 2008. Eligible customers that wanted Applicant to purchase some or all of their auction rate securities at any scheduled auction date between November 5, 2008 and June 12, 2009 were required to notify Applicant of their desire to do so at least three business days before the auction date.

Also pursuant to the relevant settlement, by letter dated October 20, 2008, Applicant made an Offer (the Second Offer, and together with the First Offer, the Offers) to eligible customers who had transferred their account from Applicant to another securities firm or bank to purchase all Subject Securities purchased by such eligible customers. Eligible customers who wanted Applicant to purchase some or all of their auction rate securities by December 23, 2008 were required to notify Applicant of their desire to do so by December 5, 2008. Eligible customers who wanted Applicant to purchase some or all of their auction rate securities at any scheduled auction date between December 23, 2008 and June 12, 2009 were required to notify Applicant of their desire to do so at least three business days before the auction date. To take advantage of the Second Offer, eligible customers were also required to arrange for the transfer of the Subject Securities to Applicant through FINRA's Automated Customer Account Transfer Service. No additional custody charges were imposed in connection with transferred securities.

The Applicant is requesting retroactive and prospective relief for the Settlement Sales. With respect to Unrelated Sales, the Applicant states that to the best of its knowledge, no Unrelated Sale has occurred. However, the Applicant is requesting retroactive relief (and prospective relief) for Unrelated Sales in the event that a sale of Auction Rate Securities by a Plan to Citigroup has occurred outside the Settlement process. If granted, the proposed exemption will be effective February 1, 2008.

8. The Applicant is requesting relief for the sale of Auction Rate Securities under two different circumstances: (a) Where Citigroup initiates the sale by sending to a Plan a written Offer to acquire the ARS (*i.e.,* an Unrelated Sale), notwithstanding that such Offer is not required under a Settlement Agreement; and (b) where Citigroup is required under a Settlement Agreement to send to Plans a written Offer to acquire the ARS (*i.e.,* a Settlement Sale). The Applicant states that the Unrelated Sales and Settlement Sales (hereinafter, either, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales would permit Plans to normalize Plan investments. The Applicant represents that each Covered Sale will be for no consideration other than cash payment against prompt delivery of the ARS, and such cash will equal the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans will not pay any commissions or transaction costs with respect to any Covered Sale.

9. The Applicant represents that the proposed exemption is protective of the Plans. The Applicant states that: Each Covered Sale will be made pursuant to a written Offer; and the decision to accept the Offer or retain the ARS will be made by a Plan fiduciary or Plan participant or IRA owner who is independent of Citigroup. Additionally, each Offer will be delivered in a manner designed to alert a Plan fiduciary that Citigroup intends to purchase ARS from the Plan. Offers made in connection with an Unrelated Sale will include the material terms of the Unrelated Sale,

[4] The Department notes that Prohibited Transaction Exemption 80–26 (45 FR 28545 (April 29, 1980), as amended at 71 FR 17917 (April 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only: (1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

[5] The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

including: The identity and par value of the Auction Rate Security; the interest or dividend amounts that are due with respect to the Auction Rate Security; and the most recent rate information for the Auction Rate Security (if reliable information is available). Offers made in connection with a Settlement Agreement will specifically include, among other things: the background of the Offer; the method and timing by which a Plan may accept the Offer; the expiration date of the Offer; a description of certain risk factors relating to the Offer; how to obtain additional information concerning the Offer; and the manner in which information concerning material amendments or changes to the Offer will be communicated. The Applicant states that, with very narrowly tailored exceptions, neither Citigroup nor any affiliate will exercise investment discretion or render investment advice with respect to a Plan's decision to accept the Offer or retain the ARS.[6] In the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, the decision to engage in a Covered Sale may be made by Citigroup after Citigroup has determined that such purchase is in the best interest of the Citigroup Plan or pooled fund. The Applicant represents further that Plans will not waive any rights or claims in connection with any Covered Sale.

10. The Applicant represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale will occur at the par value of the affected ARS (plus accrued but unpaid interest and dividends, to the extent applicable), and such value is readily ascertainable. The Applicant represents further that Citigroup will maintain the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

11. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) Each Covered Sale shall be made pursuant to a written Offer;

(b) Each Covered Sale shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

(d) Plans will not waive any rights or claims in connection with any Covered Sale;

(e)(1) the decision to accept an Offer or retain the ARS shall be made by a Plan fiduciary or Plan participant or IRA owner who is independent of Citigroup; and (2) neither Citigroup nor any affiliate shall exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the ARS;

(f) Plans shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan;

(h) With respect to any Settlement Sale, the terms and delivery of the Offer, and the terms of Settlement Sale, shall be consistent with the requirements set forth in the Settlement Agreement;

(i) Citigroup shall make available in connection with an Unrelated Sale the material terms of the Unrelated Sale, including: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due but unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available);

(j) Each Offer made in connection with a Settlement Agreement shall describe the material terms of the Settlement Sale, including the following (and shall not constitute a waiver of any claim of the tendering Plan): (1) The background of the Offer; (2) that neither the tender of ARS nor the purchase of ARS pursuant to the Offer will constitute a waiver of any claim of the tendering Plan; (3) the methods and timing by which the Plan may accept the Offer; and (4) the purchase dates, or the manner of determining the purchase dates, for ARS pursuant to the Offer and the timing for acceptance by Citigroup of tendered ARS for payment; and

(k) Citigroup shall make available to the Plan information regarding how the Plan can determine: The ARS held by the Plan with Citigroup; the number of shares and par value of the ARS; interest or dividend amounts; purchase dates for the ARS; and (if reliable information is available) the most recent rate information for the ARS.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified, and, therefore, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Subaru of America, Inc. (Subaru), Located in Cherry Hill, New Jersey

[Application No. D–11531.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Pleiades Insurance Company, Ltd. (PIC) in connection with an insurance contract sold by Minnesota Life Insurance Company (MN Life) or any successor insurance company to MN Life which is unrelated to Subaru, to provide group-term life insurance to employees of Subaru under the Subaru of America, Inc. Welfare Benefit Plan (the Plan), provided the following conditions are met:

(a) PIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Subaru that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act, (3) Has a U.S. branch, the Pleiades Insurance Company Ltd. (US Branch), which has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary State which has neither been revoked nor suspended,

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, the District of Columbia) by the Insurance Commissioner of the District of

[6] The Applicant states that while there may be communication between a Plan and Citigroup subsequent to an Offer, such communication will not involve advice regarding whether the Plan should accept the Offer.

Columbia within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred, and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) In subsequent years, the formula used to calculate premiums by MN Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(d) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and PIC will be indemnity insurance only, *i.e.,* the insurer will not be relieved of liability to the Plan should PIC be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(e) No commissions are paid with respect to the reinsurance of such contracts; and

(f) For each taxable year of PIC, the gross premiums and annuity considerations received in that taxable year by PIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which PIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by PIC. For purposes of this condition (f):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by PIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by PIC.

(2) all premium and annuity considerations written by PIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

Summary of Facts and Representations

1. Subaru of America, Inc. (Subaru), a wholly owned subsidiary of Fuji Heavy Industries, Ltd. of Japan (Fuji), is a marketer of Subaru products manufactured by Fuji. The Plan is a fully insured welfare plan within the meaning of section 3(1) of the Act. The Plan includes group-term life insurance (including basic, supplemental and dependent coverage).

2. PIC is a 100% owned subsidiary of Subaru. PIC's U.S. branch, the Pleiades Insurance Company, Ltd. (US Branch) (hereafter, "Branch"), is domiciled in the District of Columbia. As of March 31, 2009, PIC reported approximately $39 million in gross annual premiums and $214 million in total assets. The applicant represents that for each taxable year of PIC, the total amount of premiums, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance for all employee benefit plans for which PIC is a party in interest by reason of a relationship to the sponsoring employer described in section 3(14)(E) or (G) of the Act have not exceeded and will not exceed 50% of the gross premiums received by PIC from all lines of insurance in that taxable year.

3. Subaru provides to its employees certain welfare benefits through the Plan. The group-term life insurance component of the Plan currently has approximately 929 participants and beneficiaries.

4. The life insurance is currently underwritten by Minnesota Life Insurance Company (MN Life), an unaffiliated insurance carrier. Subaru has entered into a policy with MN Life for 100% of this coverage. Subaru proposes to use its subsidiary, PIC (through Branch), to reinsure 100% of the risk through a reinsurance contract between PIC and MN Life in which MN Life would pay 100% of the premiums to PIC. The premium paid to MN Life by Subaru includes fees for administrative costs, so there is no additional cost to the Plan as a result of the reinsurance arrangement. From the participants' perspective, the participants have a binding contract with MN Life, which is legally responsible for the group-term life insurance risk associated under the Plan. MN Life is liable to provide the promised coverage regardless of the proposed reinsurance arrangement.

5. The applicant represents that the proposed transaction will not in any way affect the cost to the insureds of the group-term life insurance contracts, and the Plan will pay no more than adequate consideration for the insurance. Neither Subaru nor PIC will profit from the reinsurance arrangement at the expense of the Plan or its participants. Also, Plan participants are afforded insurance protection from MN Life at competitive rates arrived at through arm's-length negotiations. MN Life is rated "A+" by the A. M. Best Company, whose insurance ratings are widely used in financial and regulatory circles. MN Life has assets in excess of $26 billion. MN Life will continue to have the ultimate responsibility in the event of loss to pay insurance benefits to the employee's beneficiary. The applicant represents that PIC is a sound, viable company which is dependent upon insurance customers that are unrelated to itself and its affiliates for premium revenue.

6. The applicant represents that the proposed reinsurance transaction will meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) PIC is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Subaru, which maintains the Plan.

(b) Branch is licensed to do business in the District of Columbia.

(c) PIC has undergone an examination by an independent certified public accountant for its fiscal year ending March 31, 2009.

(d) PIC has received a Certificate of Authority from its domiciliary State (as defined in Act section 3(10)), the District of Columbia, which has neither been revoked nor suspended.

(e) The Plan will pay no more than adequate consideration for the insurance. The proposed transaction will not in any way affect the cost to the insureds of the group-term life insurance transaction.

(f) No commissions will be paid with respect to the acquisition of insurance by Subaru from MN Life or the acquisition of reinsurance by MN Life from PIC.

(g) For each taxable year of PIC, the "gross premiums and annuity considerations received" in that taxable year for group life and health insurance (both direct insurance and reinsurance) for all employee benefit plans (and their employers) with respect to which PIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act will not exceed 50% of the "gross premiums

and annuity considerations received" by PIC from all lines of insurance in that taxable year. All of the premium income of PIC comes from reinsurance. PIC has received no premiums for the group-term life insurance in the past.

7. In summary, the applicant represents that the proposed transaction will meet the criteria of section 408(a) of the Act because: (a) Plan participants and beneficiaries are afforded insurance protection by MN Life, an "A+" rated group insurer, at competitive market rates arrived at through arm's-length negotiations; (b) PIC is a sound, viable insurance company which does a substantial amount of public business outside its affiliated group of companies; and (c) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79–41 will be met under the proposed reinsurance transaction.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

The Bank of New York Mellon (BNY Mellon), Located in Pittsburgh, PA

[Application No. D–11584.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[7]

If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply as of July 10, 2009, to the cash sale of certain medium term notes (the Notes) issued by Stanfield Victoria Finance Ltd. (Victoria Finance or the Issuer) for an aggregate purchase price of $26,997,049.52 by the BNY Mellon's Short Term Investment Fund (the Fund) to The Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the sum of (1) the total current amortized cost of the Notes as of the date of the sale plus (2) interest for the period beginning on January 1, 2008 to July 12, 2009, calculated at a rate equal to the earnings rate of the Fund during such period;

(c) The Fund did not bear any commissions, fees, transaction costs, or other expenses in connection with the sale;

(d) BNY Mellon, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Notes results in BNYMC recovering from Victoria Finance, the Issuer of the Notes, or from any third party, an aggregate amount that is more than the sum of: (1) the purchase price paid for the Notes by BNYMC and (2) interest on the purchase price paid for the Notes at the interest rate specified in the Notes, then BNYMC will refund such excess amount promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than BNY Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by sections 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of BNY Mellon or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (h)(2), and notwithstanding any provisions of subsection (a)(2) and (b) of 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (h)(1)(B)-(D) shall be authorized to examine trade secrets of BNY Mellon or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: If granted, this proposed exemption will be effective as of July 10, 2009.

Summary of Facts and Representations

1. BNY Mellon is a state bank subject to regulation by the State of New York. As of December 31, 2008, BNY Mellon managed assets in excess of $210 billion, a substantial part of which consisted of Plans subject to the Act. BNY Mellon is a subsidiary of BNYMC.

2. BNYMC is the parent of BNY Mellon by reason of its 100% ownership of BNY Mellon. BNYMC has a number of subsidiaries and affiliates. It is a Delaware financial services company that provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act and plans subject to Section 4975 of the Code. As of December 31, 2008, BNYMC had total assets of $237.5 billion.

3. The Fund is a group trust that is exempt from federal income tax pursuant to Rev. Rul. 81–100. BNY Mellon serves as a discretionary trustee for the Fund. The Fund is a short-term

[7] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

investment fund that values its assets based on their amortized cost and seeks to maintain a constant unit value equal to $1.00. The Fund invests primarily in commercial paper, including repurchase agreements, agency discount notes, corporate notes, medium term notes, floating rate notes, Treasuries, agency securities, time deposits, asset backed securities, and mortgage backed securities.

4. On July 10, 2009, the value of the Fund's portfolio was approximately $4.9 billion. Also on July 10, 2009, there were in excess of 300 direct investors in the Fund, a substantial number of which were government-sponsored employee benefit plans, individual retirement accounts subject to section 408 of the Code, and employee benefit plans covered under section 401 of the Code.[8] No in-house Plan of BNY Mellon invested in the Fund. However, the BNYMC Pension Plan did invest in the Fund, and it had a 0.05% indirect interest in the Fund.

5. On May 16, 2007, the Fund purchased, with settlement on May 18, 2007, the Notes, having an aggregate par value of $81,000,000, for $81,000,000. Victoria Finance, an unrelated party to BNY Mellon, issued these notes on May 18, 2007. The Notes had a maturity date of February 8, 2009. On November 30, 2007, BNY Mellon sold back to the Issuer $47,033,000 of the Notes pursuant to a tender offer by the Issuer. Although BNY Mellon had tendered all the Notes owned by the Fund, only a partial tender was accepted, leaving the Fund with a balance of $33,967,000 in the Notes.

6. The Issuer is a structured investment vehicle (SIV) that raised capital primarily by issuing various types and classes of commercial paper, including the Notes. The assets acquired by the Issuer, which consisted of corporate and asset backed securities, were then pledged to secure the Notes pursuant to a security agreement with an independent bank serving as collateral agent. The security agreement provided that, as a general rule, upon the occurrence of an "Enforcement Event" (as defined in the security agreement), the collateral agent was required to sell all of the Issuer's assets and distribute the proceeds thereof. Interest on the Notes was taxable and payable monthly at a variable rate that was reset on the 15th day of each month based upon the one-month London Interbank Offered Rate (LIBOR), minus four basis points. All interest accrued through December 31, 2007 was paid in full and on a timely basis.

7. The decision to invest in the Notes was made by BNY Mellon. Prior to the investment, BNY Mellon conducted an investigation of the potential investment, examining and considering the economic and other terms of the Notes. BNY Mellon represents that the investment in the Notes was consistent with the applicable investment policies and objectives of the Fund. At the time the Fund acquired the Notes, they were rated "A–1+" by Standard & Poor's Corporation (S&P) and "P–1" by Moody's Investor Services, Inc. (Moody's). Based on its consideration of the relevant facts and circumstances, BNY Mellon states that it was prudent and appropriate for the Fund to acquire the Notes.[9]

8. On November 7, 2007, S&P placed a "negative watch" on the Notes. On December 21, 2007, Moody's downgraded the rating of the Notes to "Baa3." On January 7, 2008, S&P downgraded the rating of the Notes to "B−." Responding to these events, BNY Mellon, on behalf of the Fund, executed an amendment to the security agreement governing the Notes pursuant to which, by providing notice (Election Notice) on or before January 17, 2008, BNY Mellon could elect to have the pro-rata share of the collateral assets allocable to the Notes held by the Fund excluded from any asset sale by the collateral agent that would otherwise occur immediately upon the occurrence of an Enforcement Event. On January 8, 2008, as a result of the foregoing ratings down-grades, an Enforcement Event occurred. On January 15, 2008, Moody's further downgraded its rating of the Notes to "B2." On January 16, 2008, BNY Mellon submitted an Election Notice to the collateral agent instructing the collateral agent to exclude the Fund's pro rata share of the Issuer's assets from the asset sale triggered by the occurrence of the Enforcement Event on January 8, 2008. On January 17, 2008, S&P further downgraded its rating of the Notes to "D."

9. BNY Mellon's election was based on BNY Mellon's determination that the market for the collateral assets securing the Notes was severely distressed and that the inherent value of such assets was substantially greater than the price that could have been obtained if such assets were sold currently by the collateral agent. Accordingly, BNY Mellon determined that it was in the best interests of the Fund to exclude such assets from a current sale. Had BNY Mellon not executed this amendment and submitted the Election Notice, the assets of the Issuer underlying the Notes likely would have been sold at a substantial discount, resulting in large losses for the Fund's investors.

10. The Applicant represents that since the time of the Enforcement Event, a collateral agent and an enforcement manager have controlled the Issuer and, under the terms of the applicable security agreement, stopped paying interest or principal on the Notes. However, pro rata periodic distributions to holders of the Notes and other senior creditors of the Issuer have been made based on the cash flow received by the Issuer with respect to underlying assets. The Applicant represents that as of July 12, 2009, the Fund had received distributions from the collateral agent sufficient to pay down the unpaid interest accrued through January 15, 2008, plus approximately 23 percent of the amortized cost of the Notes (from $33,967,000 to $26,090,137.06).

11. BNY Mellon represents that following the date of the Enforcement Event, the market value of the Notes

[8] It is represented that section 408(b)(8) of the Act would apply to the investment by the ERISA-covered Plans in the Fund. Section 408(b)(8) of the Act provides a statutory exemption for any transactions between a plan and a common or collective trust fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency if certain requirements are met.

[9] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Moreover, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (*see* 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

decreased substantially. BNY Mellon further represents that on or about July 10, 2009, it obtained information from two independent broker-dealers (Deutsche Bank and Credit Suisse) that the market for the Notes was in extreme distress, with prices for actual trades being substantially lower than their par value or amortized cost. In this regard, Deutsche Bank provided an execution price of $29.50 and Credit Suisse provided a bid indication price of $25.00.

12. In view of the foregoing, BNY Mellon and the BNY Mellon fiduciary committee with responsibility for overseeing the Fund ultimately determined that it would be appropriate and in the best interests of the Fund to sell the Notes to BNYMC at a price equal to the sum of (a) the total current amortized cost of the Notes, plus (b) interest for the period from January 1, 2008 to July 12, 2009, calculated at a rate equal to the earnings rate of the Fund during such period. Such a sale would protect the Fund from any investment loss with respect to the Notes. BNY Mellon also determined that the purchase of the Notes by BNYMC would be permissible under applicable banking law.

13. Shortly before the consummation of the transaction on July 10, 2009, BNY Mellon sent written notice to the designated representative of each of the investors having a direct interest in the Fund of BNY Mellon's intent to cause the Fund to sell the Notes to BNYMC. While such notice did not contemplate or require any response, it should be noted that this notice did not generate any negative reaction from any of the recipients thereof.

14. The Applicant represents that on July 10, 2009, BNYMC purchased the Notes from the Fund for an aggregate lump sum payment of $26,997,049.52, which amount represented the sum of (a) the total current amortized cost of the Notes ($26,090,137.06), plus (b) interest for the period from January 1, 2008 to July 12, 2009, calculated at a rate equal to the earnings rate of the Fund during such period ($906,912.46).

15. BNY Mellon, as trustee of the Fund, believed that the sale of the Notes to BNYMC was in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction. BNY Mellon states that any sale of the Notes on the open market would have produced significant losses for the Fund and for the participating investors in the Fund.

16. BNY Mellon represents that the sale of the Notes by the Fund to BNYMC benefited the investors in the Fund because the purchase price paid by BNYMC for the Notes substantially exceeded the aggregate fair market value of the Notes. In addition, BNY Mellon states that the transaction was a one-time sale for cash in connection with which the Fund did not bear any brokerage commissions, fees, or other expenses. BNY Mellon represents that it took all appropriate actions necessary to safeguard the interests of the Fund and its participating investors in connection with the sale of the Notes.

17. BNY Mellon states that the sale of the Notes by the Fund to BNYMC resulted in an assignment of all of the Fund's rights, claims, and causes of action against the Issuer or any third party arising in connection with or out of the issuance of the Notes or the acquisition of the Notes by the Fund. BNY Mellon states further that if the exercise of any of the foregoing rights, claims or causes of action results in BNYMC recovering from the Issuer or any third party an aggregate amount that is more than the sum of (a) the purchase price paid for the Notes by BNYMC, and (b) interest on the purchase price paid for the Notes at the interest rate specified in the Notes, then BNYMC will refund such excess amount promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

18. In summary, the Applicant represents that the transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale of the Notes by the Fund to BNYMC was a one-time transaction for cash; (b) the Fund received an amount equal to the sum of (i) the total current amortized cost of the Notes, plus (ii) interest for the period beginning on January 1, 2008 to July 12, 2009, calculated at a rate equal to the earnings rate of the Fund during such period, which amount was substantially greater than the aggregate market value of the Notes at the time of sale, as determined based on information regarding the then prevailing trading prices for the Notes obtained from two independent broker-dealers; (c) the Fund did not pay any commissions or other expenses with respect to the sale; (d) BNY Mellon, as trustee of the Fund, and the BNY Mellon fiduciary committee with responsibility for overseeing the Fund determined that the sale of the Notes to BNYMC was in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction; (e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Fund in connection with the transactions; and (f) BNYMC will promptly refund to the Fund any amount recovered from the Issuers or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes, if such amounts are in excess of the sum of (i) the purchase price paid for the Notes by BNYMC, and (ii) interest on the purchase price paid for the Notes at the interest rate specified in the Notes (after deducting all reasonable expenses incurred in connection with the recovery).

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and

that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of February, 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–3444 Filed 2–22–10; 8:45 am]

BILLING CODE 4510–29–P

OFFICE OF MANAGEMENT AND BUDGET

Coordination and Strategic Planning of the Federal Effort Against Intellectual Property Infringement: Request of the Intellectual Property Enforcement Coordinator for Public Comments Regarding the Joint Strategic Plan

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Request for written submissions from the public.

SUMMARY: The Federal Government is currently undertaking a landmark effort to develop an intellectual property enforcement strategy building on the immense knowledge and expertise of the agencies charged with enforcing intellectual property rights. By committing to common goals, the Government will more effectively and efficiently combat intellectual property infringement. In this request for comments, the Government, through the office of the Intellectual Property Enforcement Coordinator ("IPEC"), invites public input and participation in shaping an effective intellectual property enforcement strategy.

This new effort is mandated by the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110–403 (Oct. 13, 2008) ("the PRO IP Act" or "the Act") which created, within the Executive Office of the President, the position of the IPEC. The Act requires the IPEC to chair an interagency intellectual property enforcement advisory committee in order to develop an Administration strategy for enforcement against intellectual property infringement: The Joint Strategic Plan. The IPEC is currently working with the interagency advisory committee to develop this intellectual property enforcement strategy.

This request for comments and for recommendations for an improved enforcement strategy is divided into two parts. In the first, the IPEC seeks written submissions from the public regarding the costs to the U.S. economy resulting from intellectual property violations, and the threats to public health and safety created by infringement. In the second part, the IPEC requests detailed recommendations from the public regarding the objectives and content of the Joint Strategic Plan and other specific recommendations for improving the Government's intellectual property enforcement efforts. Responses to this request for comments may be directed to either of these two parts, or both, and may include a response to one or more requests for information found in either part.

DATES: Submissions must be received on or before Wednesday, March 24, 2010, at 5 p.m.

ADDRESSES: All submissions should be sent electronically via *intellectualproperty@omb.eop.gov.*

Publication and Confidential Information

Submissions filed in response to this request will be made available to the public by posting them on the Internet. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you have confidential business information that would support your recommendation or that you believe would help the Government formulate an effective enforcement strategy, please let us know, and we may request that additional information.

FOR FURTHER INFORMATION CONTACT: Thomas L. Stoll, Office of the Intellectual Property Enforcement Coordinator, at (202) 395–1808.

SUPPLEMENTARY INFORMATION: Through the PRO IP Act, Congress created the IPEC, to serve within the Executive Office of the President, and an interagency advisory committee specifically tasked with formulating and implementing a Joint Strategic Plan to improve the effectiveness of the U.S. Government's efforts to protect the rights of intellectual property owners and to reduce the costs of and threats posed by intellectual property infringement, in the U.S. and in other countries. The IPEC seeks public input, in the form of written comments, on the formulation of a Joint Strategic Plan and on the U.S. Government's intellectual property enforcement efforts.

Part I

The Joint Strategic Plan must contain an analysis of the threat posed by violations of intellectual property rights, including the costs to the U.S. economy resulting from such violations, and the threats to public health and safety created by infringement. Thus, the IPEC seeks written submissions from the public identifying the costs to the U.S. economy resulting from infringement of intellectual property rights, both direct and indirect, including any impact on the creation or maintenance of jobs.

In addition, the IPEC seeks written submissions identifying threats to public health and safety posed by intellectual property infringement, in the U.S. and in other countries.

Submissions directed to the economic costs of violations of intellectual property rights must clearly identify the methodology used in calculating the estimated costs and any critical assumptions relied upon, identify the source of the data on which the cost estimates are based, and provide a copy of or a citation to each such source.

Submissions directed to threats to public health or safety must include a detailed description of the threat, identify the source of the information substantiating the existence of that threat and provide a copy of or a citation to each such source.

The issues and challenges that pertain to adequate and appropriate enforcement of intellectual property are changing rapidly. Therefore, if desired, submissions may also identify and discuss emerging or future threats to the U.S. economy or to health and safety over the next five to ten years.

Part II

The IPEC requests written submissions from the public that provide specific recommendations for accomplishing one or more of the objectives of the Joint Strategic Plan, or other specific recommendations for significantly improving the U.S. Government's enforcement efforts. Recommendations may include, but need not be limited to: Proposed legislative changes, regulations, executive orders, other executive action, guidelines, or changes in policies, practices or methods.

Recommendations should include a detailed description of a preferred method for accomplishing the recommendation. If a submission includes multiple recommendations, the IPEC requests that the submission rank the recommendations in order of priority, where possible.

The objectives of the Joint Strategic Plan include:

- Reducing the supply of infringing goods, domestically and internationally;
- Identifying weaknesses, duplication of efforts, waste, and other unjustified

impediments to effective enforcement actions;

• Promoting information sharing between participating agencies to the extent permissible by law;

• Disrupting and eliminating infringement networks in the U.S. and in other countries;

• Strengthening the capacity of other countries to protect and enforce intellectual property rights;

• Reducing the number of countries that fail to enforce intellectual property rights;

• Assisting other countries to more effectively enforce intellectual property rights;

• Protecting intellectual property rights in other countries by:

• Working with other countries to reduce intellectual property crimes in other countries;

• Improving information sharing between law enforcement agencies in the U.S. and in other countries; and

• Establishing procedures for consulting with interested groups within other countries.

• Establishing programs to enhance the enforcement efforts of foreign governments by providing training and technical assistance designed to:

• Enhance the efficiencies and minimize the duplication of U.S. Government training and assistance efforts;

• Prioritize deployment of U.S. Government resources to those countries in which programs can be carried out most effectively and will have the greatest impact on reducing the number of infringing products in the relevant U.S. market, protecting the intellectual property rights of U.S. rights holders, and protecting the interests of U.S. persons otherwise harmed by infringements in other countries.

Supplemental Comment Topics

In addition to the foregoing, the IPEC requests information and/or recommendations on the following list of additional supplemental topics. The submission of responses to one or more of the following topics below is entirely optional.

1. Suggest methods to improve the adequacy, effectiveness and/or coordination of the various Federal departments, agencies and programs that are charged with enforcement of intellectual property.

2. Identify specific existing enforcement actions, methods, procedures or policies employed by the U.S. Government or governments of other countries that have been particularly effective at curtailing or preventing infringement (including, if possible, specific examples illustrating the effectiveness of those methods).

3. Identify specific existing processes involving cooperation between stakeholders and the U.S. Government (or between stakeholders and other governments) that have been particularly effective at curtailing or preventing infringement.

4. Provide examples of existing successful agreements, in the U.S. or abroad, that have had a significant impact on intellectual property enforcement, including voluntary agreements among stakeholders or agreements between stakeholders and the relevant government.

5. Suggest methods for strengthening information sharing between stakeholders and U.S. Government agencies to improve intellectual property rights enforcement efforts, including methods the U.S. Government can use to obtain more accurate information concerning the identities, corporate structures and locations of those suspected of intellectual property infringement.

6. Suggest new methods for rights holders and importers to provide information to U.S. Customs and Border Protection (CBP) on distribution and supply chains. Such information could enable CBP to increase the effectiveness of its process for selecting ("targeting") imports for inspection by creating a segment of trusted imports, which would allow CBP to better focus its targeting on high risk imports and imports for which advance information is lacking.

7. Describe existing technology that could or should be used by the U.S. Government or a particular agency or department to more easily identify infringing goods or other products.

8. Suggest approaches for increasing standardization among authentication tools and technologies applied by rights holders to products to enable identification of these goods as genuine through a physical examination of the goods or product.

9. Suggest how state and local law enforcement authorities could more effectively assist in intellectual property enforcement efforts, including whether coordination could be improved, if necessary, and whether they should be vested with additional authority to more actively participate in prosecutions involving intellectual property enforcement.

10. Describe the adequacy and effectiveness of the reporting by the various agencies responsible for enforcing intellectual property infringements, such as the reporting of investigations, seizures of infringing goods or products, prosecutions, the results of prosecutions, including whether any further voluntary reporting of activities should be made, in keeping with other federal law.

11. Suggest methods to improve the adequacy, effectiveness and/or coordination of U.S. Government personnel stationed in other countries who are charged with enforcement of intellectual property, including but not limited to:

a. Department of Justice IP Law Enforcement Coordinator (IPLEC) program;

b. U.S. Patent and Trademark Office Intellectual Property attachés program;

c. Food and Drug Administration foreign country offices;

d. Foreign Agricultural Service;

e. Department of Commerce International Trade Administration Foreign Commercial Service officers;

f. Department of Commerce International Trade Administration compliance attachés;

g. Department of Homeland Security/ Immigration and Customs Enforcement and Department of Homeland Security/ Customs and Border Patrol attachés and other representatives;

h. Department of State's Foreign Service officers and post leadership; and

i. Office of the U.S. Trade Representative IP attaché.

12. Suggest ways to improve the adequacy, effectiveness and/or coordination of the enforcement training and technical assistance provided by the U.S. Government, including (but not limited to):

a. Identification of specific countries or geographical regions that could benefit from U.S. Government training and technical assistance and the program areas where training and assistance should focus;

b. Suggestions for how to leverage resources or partnerships to broaden the impact of U.S. Government training and assistance; and

c. Suggestions to enhance industry participation in relevant training programs.

13. Suggest specific measures to further secure the domestic and international supply chains to minimize the threat posed by infringing goods or products.

14. Suggest specific methods to limit or prevent use of the Internet to sell and/or otherwise distribute or disseminate infringing products (physical goods or digital content).

15. Provide information on the various types of entities that are involved, directly or indirectly, in the distribution or dissemination of infringing products and a brief

description of their various roles and responsibilities.

16. Discuss the effectiveness of recent efforts by educational institutions to reduce or eliminate illegal downloading over their networks. Submissions should include recent specific examples.

17. Suggest specific strategies for reducing the threats to public health and safety caused by the use or consumption of infringing goods (for example, counterfeit drugs, medical devices, biologics, and ingested consumer products).

18. Discuss the possible application of World Trade Organization provisions, including, but not limited to, those on anti-dumping, subsidies, standards and safeguard measures in cases where failure to enforce intellectual property laws in other jurisdictions produces unfair cost or other advantages for the production or distribution of goods and services or otherwise disadvantages U.S. right holders.

19. Suggest specific strategies to significantly reduce the demand for infringing goods or products both in the U.S. and in other countries.

20. Provide specific suggestions on the need for public education and awareness programs for consumers, including a description of how these programs should be designed, estimates of their cost, whether they should focus on specific products that pose a threat to public health, such as counterfeit pharmaceuticals, or whether should they be general infringement awareness programs.

The above list of topics for discussions and recommendations is not intended to limit the scope of the submissions. Rather, the public is encouraged to submit any detailed concrete recommendation for significantly improving intellectual property rights enforcement.

Dated: February 18, 2010.

Victoria A. Espinel,

United States Intellectual Property Enforcement Coordinator.

[FR Doc. 2010–3539 Filed 2–22–10; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Tuesday, February 23, 2010 from 9:30 a.m. until 1 p.m.

AGENDA: Nineteenth Meeting of the National Museum and Library Services Board.

I. Welcome.
II. Approval of Minutes.
III. Financial Update.
IV. Legislative Update.
V. Board Program.
VI. Board Updates.
VII. Closing Remarks by the Director.
VIII. Adjourn.

(Open to the Public.)

PLACE: The meetings will be held in the Room MO–9 of the Old Post Office, located at 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Director of Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC, 20036. Telephone: (202) 653–4676 or E-mail: *elyons@imls.gov.*

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated: February 16, 2010.

Kate Fernstrom,

Chief of Staff.

[FR Doc. 2010–3306 Filed 2–22–10; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, March 9, 2010.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 7954A Safety Study—Introduction of Glass Cockpit Avionics into Light Aircraft.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, March 5, 2010.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Friday, February 19, 2010.

Candi R. Bing,

Alternate Federal Register Liaison Officer.

[FR Doc. 2010–3692 Filed 2–19–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0055]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 28, 2010, to February 10, 2010. The last biweekly notice was published on February 9, 2010 (75 FR 6408).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the

following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: December 16, 2009.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 5.6.5, "Core Operating Limits Report (COLR)," to replace the existing

reference for the large break loss-of-coolant accident (LOCA) analysis methodology with a reference to WCAP–16009–P–A, "Realistic Large Break LOCA Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method (ASTRUM)."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Section 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to TS 5.6.5.b as a method used for establishing core operating limits. Accident analyses are not accident initiators; therefore, the proposed change does not involve a significant increase in the probability of an accident. The analyses using ASTRUM demonstrated that the acceptance criteria in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light water nuclear power reactors," were met. Large break LOCA analyses performed consistent with the methodology in NRC approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met; thus, this change does not involve a significant increase in the consequences of an accident. No physical changes to the plant are associated with the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises TS Section 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to TS 5.6.5.b as a method used for establishing core operating limits. There are no physical changes being made to the plant as a result of using the Westinghouse ASTRUM analysis methodology in WCAP–16009–P–A for performance of the large break LOCA analyses. Large break LOCA analyses performed consistent with the methodology in NRC approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met. No new modes of plant operation are being introduced. The configuration, operation, and accident response of the structures or components are unchanged by use of the new analysis methodology. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario. The parameters assumed in the analyses are within the design limits of existing plant equipment.

In addition, employing the Westinghouse ASTRUM large break LOCA analysis methodology does not create any new failure modes that could lead to a different kind of accident. The design of systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to instrumentation actuation setpoints. Adding the reference to WCAP–16009–P–A in TS Section 5.6.5.b is an administrative change that does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises TS Section 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to TS 5.6.5.b as a method used for establishing core operating limits.

The analyses using ASTRUM demonstrated that the applicable acceptance criteria in 10 CFR 50.46 are met. Margins of safety for large break LOCAs include quantitative limits for fuel performance established in 10 CFR 50.46. These acceptance criteria are not being changed by this proposed new methodology. Large break LOCA analyses performed consistent with the methodology in NRC approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met; thus, this change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 17, 2009.

Description of amendment request: The proposed amendments would revise Technical Specification 3.1.2, "Reactivity Anomalies," to allow a change in the method of calculating core reactivity for the purpose of performing the reactivity anomaly surveillance. The surveillance is currently determined by a comparison of predicted to actual control rod density. The proposed change would allow performance of the surveillance by comparison of predicted to measured (or monitored) core reactivity. The proposed change would not modify the frequency of the surveillance requirement (SR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed Technical Specifications change does not affect any plant systems, structures, or components designed for the prevention or mitigation of previously evaluated accidents. The amendment would only change how the reactivity anomaly check is performed. Verifying that the core reactivity is consistent with predicted values ensures that accident and transient safety analyses remain valid. This amendment changes the LCO [Limiting Condition for Operation] 3.1.2 and SR 3.1.2.1 requirements such that, rather than performing the check by comparing predicted to actual control rod density, the check is performed by a direct comparison of k_{eff}. Present day on-line core monitoring systems, such as the one in use at Plant Hatch, are capable of performing the direct measurement of reactivity.

Therefore, since the reactivity anomaly check will continue to be performed by a viable method, the proposed amendment does not involve a significant increase in the probability or consequence of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This Technical Specifications amendment request does not involve any changes to the operation, testing, or maintenance of any safety-related, or otherwise important to safety, system. All important to safety systems will continue to be operated, surveillances performed, and maintained within their design bases. The proposed changes to the reactivity anomaly LCO 3.1.2 and SR 3.1.2.1 will only provide a new, more efficient method of detecting an unexpected change in core reactivity.

Since all systems continue to be operated within their design bases, no new failure modes are introduced and the possibility of a new or different kind of accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This proposed Technical Specifications amendment proposes to change the LCO 3.1.2 and SR 3.1.2.1 method for performing the reactivity anomaly surveillance from a comparison of predicted to actual control rod density to a comparison of predicted to actual k_{eff}. The direct comparison of k_{eff} provides a technically superior method of calculating any differences in the expected core reactivity. The reactivity anomaly check will continue to be performed at the same frequency as is currently required by the Tech Specs [Technical Specifications], only the method of performing the check will be changed. Consequently, core reactivity assumptions made in safety analyses will continue to be adequately verified.

The proposed amendment does not therefore involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Gloria Kulesa.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 31, 2008, as supplemented by letters dated April 3 and 29, 2008; May 15 and 28, 2008; September 30, 2008; October 7, 16, 23, and 28, 2008; November 6, 19, and 25, 2008; December 22, 2008; February 27, 2009; March 6, 2009; April 3 (2 separate letters), and April 30, 2009; June 19, 2009; August 10, 2009; November 5 and 19, 2009; and December 17, 2009.

Brief description of amendments: The amendments revised the Technical Specifications and approved a change to the licensee's Updated Final Safety Analysis Report associated with the acceptance of the new reactor protective system and engineered safeguard protective system digital upgrade.

Date of Issuance: January 28, 2010.

Effective date: As of the date of issuance and shall be implemented prior to the installation of the reactor protective system and engineered safeguard protective system digital upgrade.

Amendment Nos.: 366, 368, and 367.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** December 3, 2008 (73 FR 73663).

The supplements dated April 3 and 29, 2008; May 15 and 28, 2008; September 30, 2008; October 7, 16, 23, and 28, 2008; November 6, 19, and 25, 2008; December 22, 2008; February 27, 2009; March 6, 2009; April 3 (2 separate letters), and April 30, 2009; June 19, 2009; August 10, 2009; November 5 and 19, 2009; and December 17, 2009; provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: February 16, 2009.

Brief description of amendment: The amendment modified Technical Specification 5.5.16, "Reactor Building Leakage Rate Testing Program," which currently contains reactor building leak rate criteria for overall Type A, B, and C testing, but does not specify criteria for Type B air lock leakage testing. The amendment added criteria for overall air lock leakage testing and to adopt a low pressure test method relevant to the air lock door seals. The change is consistent with NUREG–1430, Revision 3.1, "Standard Technical Specifications (STS) for Babcock & Wilcox Plants."

Date of issuance: February 1, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 242.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: April 21, 2009 (74 FR 18253).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 1, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: July 30, 2009, as supplemented on December 29, 2009.

Brief description of amendments: Technical Specification (TS) Section 3.6.3.1, "Containment Atmosphere Dilution (CAD) System," is deleted to modify containment combustible gas control requirements as permitted by Title 10 of the Code of Federal Regulations, Part 50, Section 50.44 (10 CFR 50.44). 10 CFR 50.44 was revised on September 16, 2003, as noticed in the Federal Register (68 FR 54123). The TSs are revised consistent with Technical Specification Task Force Traveler 478, Revision 2, "BWR [Boiling-Water Reactor] Technical Specification Changes that Implement the Revised Rule for Combustible Gas Control."

Date of issuance: January 28, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 274 and 278.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 6, 2009, (74 FR 51331).

The supplement dated December 29, 2009, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2010.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 26, 2009, and supplemented by letter dated May 29, 2009.

Brief description of amendment: The amendment allows adopting a new methodology, developed for Crystal River Unit 3 Nuclear Generating Plant (CR–3) by AREVA NP, to analyze the rod ejection accident under extended power uprate conditions. The CR–3 Improved Technical Specifications Section 5.6.2.18, "Core Operating Limits Report (COLR)," would be revised to add ANP–2788P, "Crystal River 3 Rod Ejection Accident Methodology Report," to the list of approved methods used in developing the COLR. In addition, this amendment would delete Operating License Condition 2.C.(12) that identified topical reports BAW–10164P–A, Revision 4, and BAW–1 0241 P, Revision 0, that were used in developing COLR for Cycle 14. These topical reports were subsequently incorporated into BAW–10179P–A, "Safety Criteria Methodology for Acceptable Cycle Reload Analysis."

Date of issuance: January 28, 2010.

Effective date: As of the date of issuance and shall be implemented during Refuel 17 that is scheduled for fall of 2011.

Amendment No. 237.

Facility Operating License No. DPR–72: Amendment revises the facility operating license and the technical specifications.

Date of initial notice in Federal Register: May 12, 2009 (74 FR 22179).

The supplement dated May 29, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2010.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 21, 2009, as supplemented on September 8, 2009, October 9, 2009, and January 26, 2010 (TSC 07–05).

Brief description of amendments: The proposed amendments revised the Technical Specifications (TSs) and upgraded the Emergency Core Cooling System (ECCS) requirements to be more consistent with NUREG–1431, Revision 3, "Standard Technical Specifications—Westinghouse Plants." The upgrade revised Sequoyah Nuclear Plant, Units 1 and 2 TS Section 3/4.5.2, "ECCS Subsystems—T_{avg} Greater Than or Equal to 350 °F," TS Section 3/4.5.3, "ECCS Subsystems—T_{avg} Less Than 350 °F," and the corresponding surveillance requirements (SRs) that would resolve an inconsistency between SR 4.5.2.f and plant safety analyses.

Date of issuance: January 28, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 326 and 319.

Facility Operating License No. DPR–77 and DPR–79: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 16, 2009 (74 FR 28580).

The supplement letters dated September 8, 2009, October 9, 2009, and January 26, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2010.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 20, 2009.

Brief description of amendments: The amendments deleted paragraph g of Technical Specification (TS) 6.2.2, "Facility Staff," to eliminate working-hour restrictions in the TS, as similar requirements are sufficiently imposed by Title 10 of the Code of Federal Regulations (10 CFR), Part 26, Subpart I. This change is consistent with the Nuclear Regulatory Commission-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler TSTF–511, Revision 0, "Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26."

Date of issuance: February 2, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 327 and 320.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the License and TSs.

Date of initial notice in Federal Register: December 1, 2009 (74 FR 62837).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 2010.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the

standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1]

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to

Continued

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least five (5) days prior to the filing deadline, the requestor/petitioner must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the requestor/petitioner (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor/petitioner has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of

contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: January 24, 2010.

Description of amendment request: The amendment revised Technical Specification 3.6.9, "Distributed Ignition System (DIS)," to allow Train B of the DIS to be considered operable with two inoperable ignitors. The current technical specifications permit no more than one inoperable ignitor per train for maintaining operability. The proposed technical specification revision is applicable until the fall 2010 refueling outage, or until the unit enters a mode which allows replacement of the affected ignitors without exposing personnel to significant radiation and safety hazards.

Date of issuance: February 4, 2010.

Effective date: As of the date of issuance, to be implemented within 5 days.

Amendment No.: 294.

Facility Operating License No. DPR–74: Amendment revised the Technical Specifications and License.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Public notice of the proposed amendment was published in *The Herald-Palladium* newspaper, located in the City of St. Joseph, Berrien County, Michigan, on January 29 and 30, 2010. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated February 4, 2010.

Attorney for licensee: Mr. James M. Petro, Senior Legal Counsel, American Electric Power, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert J. Pascarelli.

Dated at Rockville, Maryland, this 16th day of February 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3357 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05154; NRC–2010–0056]

Notice of Consideration of Amendment Request for Decommissioning of Analytical Bio-Chemistry Laboratories, Inc. Sanitary Lagoon, Columbia, Missouri, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by April 26, 2010.

FOR FURTHER INFORMATION CONTACT: Mike McCann, Senior Health Physicist, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials and Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; Telephone: (630) 829–9856; fax number: (630) 515–1259; or by e-mail at *Mike.Mccann@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 24–13365–01 issued to Analytical Bio-Chemistry Laboratories, Inc. (the Licensee) pursuant to 10 CFR part 30. By application dated October 19, 2009, the Licensee requested authorization to decommission a sanitary lagoon, drain field and nearby out-door area (the Facility), which is part of the licensee's 56 acre site located at 7200 East ABC Lane, Columbia, Missouri. The licensee attached to the application for NRC review a decommissioning plan (DP) that describes the decommissioning actions to be employed (ADAMS Accession No. ML100120325).

The licensee's business activities include the conduct of research, development, and manufacturing of pharmaceuticals and agricultural chemicals. The licensee began operations at the site in 1968. The licensee was issued Byproduct Material License No. 24–13365–01 in 1972 for possession and use of sealed sources in electron capture detectors in gas chromatography instruments. The licensee's research and commercial activities involving the use of unsealed radioactive materials increased over time with the addition of other radionuclides. The facility is located at 7200 East ABC Lane in Columbia, Missouri adjacent to Interstate 70 approximately 3 miles northeast of the city of Columbia. The licensee's site is approximately 56 acres in size and is zoned as planned office, general industrial, and controlled industrial districts in central Boone County, Missouri.

The Facility was approved by the Missouri Department of Natural Resources on June 6, 1986, to serve the licensee's site facilities' sanitary needs. The Facility was a single 13,500 square foot (0.31 acre) surface lagoon. The Facility and its associated application area and drain field were constructed on the west side of the site. Through site operations, small amounts of carbon-14 and hydrogen-3 were discharged to the sanitary lagoon. This lagoon served the sanitary needs of the facility until March 2, 2004, when sewer discharge was diverted to the Boone County Regional Sewer District.

An NRC administrative review, documented in a letter to the Licensee dated January 11, 2010, (ML100120321) found the DP acceptable for detailed technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. 24–13365–01. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954 (AEA), as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. If this amendment is approved, the license will be amended to authorize a partial site release that allows unrestricted use of the Facility following completion of decommissioning activities and verification by the NRC that the radiological criteria for unrestricted use of a building or separate area has been met. The licensee will continue licensed operations within other approved locations at the remainder of the site.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing

requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by April 26, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the Facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by April 26, 2010.

IV. Electronic Submissions (E–Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note

that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from February 23, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Dated at Lisle, IL, this 9th day of February 2010.

For the Nuclear Regulatory Commission,

Christine A. Lipa,

Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 2010–3351 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530; NRC–2010–0058]

Arizona Public Service Company, et al. Palo Verde Nuclear Generating Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix G, "Fracture Toughness Requirements," for Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, issued to the Arizona Public Service Company (APS, or the licensee), for operation of the Palo Verde Nuclear Generating Station (PVNGS, the facility), Units 1, 2, and 3, respectively, located in Maricopa County, Arizona. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

By letter dated February 19, 2009, as supplemented by letter dated December 22, 2009, the licensee submitted a license amendment request where, among other changes, the licensee requested the use of an alternate methodology for calculating the stress intensity factor K_{IM} due to internal pressure loading. As specified in the NRC safety evaluation approving Combustion Engineering (CE) Topical Report NPSD–683–A, Revision 6, "Development of a RCS [Reactor Coolant System] Pressure and Temperature Limits Report (PTLR) for the removal of P–T [Pressure Temperature] Limits and LTOP [Low-Temperature Overpressure Protection] Requirements from the Technical Specifications," dated March 16, 2001, the licensee's application included a request for an exemption from the requirements of 10 CFR Part 50, Appendix G for pressure temperature (P–T) limits, since the alternate methodology applies the CE Nuclear Steam Supply System method

for calculating K_{IM} stress intensity values.

The proposed action would exempt the licensee from certain requirements of Appendix G to 10 CFR Part 50 to allow the application of the methodology in CE NPSD–683–A, Revision 6, for the calculation of flaw stress intensity factors due to internal pressure loadings (K_{IM}).

The Need for the Proposed Action

The exemption is needed to allow the licensee to use an alternate methodology to meet the fracture toughness requirements for the reactor coolant pressure boundary. In the considering the exemption request, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule, based on the alternate methodology proposed by the licensee. The proposed action would revise the currently-approved methodology for P–T limit calculations to incorporate the methodology approved for use in CE NPSD–683–A, Revision 6. The topical report allows the use of an alternate methodology to calculate the flaw stress intensity factors due to internal pressure loadings (K_{IM}). Specifically, the exemption is needed because the methodology in CE NPSD–683–A, Revision 6, could not be shown to be conservative with respect to the methodology for the determination of K_{IM} provided in Editions and Addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G, through the 1995 Edition and 1996 Addenda (the latest Edition and Addenda of the ASME Code which had been incorporated into 10 CFR 50.55a at the time of the staff's review of CE NPSD–683–A, Revision 6). Therefore, the licensee submitted an exemption request, consistent with the requirements of 10 CFR 50.60, to apply the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, as part of the PVNGS, Units 1, 2, and 3, PTLR methodology.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the use of the alternate methodology described above would provide an adequate margin of safety against brittle failure of the reactor pressure vessels at PVNGS, Units 1, 2 and 3. The proposed change does not involve any replacement or modification of plant components and no changes are proposed in the operation of PVNGS. Therefore the staff concludes that the use of an alternate methodology as described in the licensee's request would not significantly affect plant safety and would not have a significant adverse affect on the probability of an accident occurring.

The proposed action will not result in any non-radiological impacts or radiological impacts. The proposed action does not result in changes to the operation of the plant and supporting facilities, land use, or water use, nor does it result in changes to the quality or quantity of non-radiological and radiological effluents. No impacts are expected to the air or ambient air quality. No impacts are expected to aquatic or terrestrial habitats or species, or to threatened, endangered, or protected species. No impacts are expected to historic and cultural resources, or to socioeconomic resources. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided in the exemption to 10 CFR 50, Appendix G, which will allow the use of the methodology in Topical Report CE NPSD–683–A, Revision 6, to calculate the flaw stress intensity factors due to internal pressure loadings (K_{IM}). The exemption will be issued in a future letter to the licensee.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, NUREG–0841, dated February 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on February 12, 2010, the staff consulted with the Arizona State official, Mr. Aubrey Godwin of the Arizona Radiation Regulatory Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated February 19 and December 22, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML090641014 and ML10040069, respectively). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of February 2010.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3496 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; NRC–2010–060]

STP Nuclear Operating Company

South Texas Project, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating

Licenses numbered NPF–76 and NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt STP, Units 1 and 2, from the required implementation date of March 31, 2010, for certain new requirements of 10 CFR Part 73. Specifically, STP, Units 1 and 2, would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. The licensee for STP, Units 1 and 2, has proposed an alternate full compliance implementation date of June 30, 2010, 3 months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 FR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the STP, Units 1 and 2, site.

The proposed action is in accordance with the licensee's application dated November 18, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time required to perform the required upgrades to the STP, Units 1 and 2 security systems.

Environmental Impacts of the Proposed Action

The NRC staff has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed action to extend the compliance implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability or consequences of an accident.

The proposed action would not result in any increased radiological hazards beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact (Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)).

With its request to extend the compliance implementation deadline, the licensee has proposed compensatory measures to be taken in lieu of full compliance with the new requirements specified in 10 CFR Part 73. The licensee currently maintains a security system acceptable to the NRC. The proposed compensatory measures will continue to provide acceptable physical protection of the STP, Units 1 and 2, in lieu of the new requirements in 10 CFR Part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR Part 73 to June 30, 2010, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided as part of a letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed actions (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, compliance implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the STP, Units 1 and 2, NUREG–1172, dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on February 1, 2010, the NRC staff consulted with the Texas State official, Ms. Alice Rogers of the Texas State Department of Health, regarding the environmental impact of the proposed action. The Texas State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 18, 2009. Portions of November 18, 2009, submittal contains security related information and, accordingly, are not available to the public. Other parts of the documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of February 2010.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch LPLIV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3498 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323; NRC–2010–0059]

Pacific Gas and Electric Company; Diablo Canyon Power Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (PG&E, the licensee), for operation of the Diablo Canyon Power Plant, Unit Nos. 1 and 2 (DCPP), located in San Luis Obispo County, California. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt PG&E from the required implementation date of March 31, 2010, for several new requirements of 10 CFR Part 73. Specifically, PG&E would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. PG&E has proposed an alternate full compliance implementation date of June 30, 2011, approximately 15 months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the PG&E site.

The proposed action is in accordance with the licensee's application dated December 4, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the PG&E security system to meet the new requirements in 10 CFR Part 73. Implementation of the new requirements will involve physical modifications to the existing plant security system.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources.

There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

With its request to extend the implementation deadline, the licensee currently maintains a security system acceptable to the NRC and that will continue to provide acceptable physical protection of the DCPP in lieu of the new requirements in 10 CFR Part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR Part 73 to June 30, 2011, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the DCPP, dated May 1973, with Addendum dated May 1976.

Agencies and Persons Consulted

In accordance with its stated policy, on January 20, 2010, the NRC staff consulted with the California State official, Mr. Stephen Hsu of the California Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Portions of the December 4, 2009, submittal contain security-related and safeguards information and, accordingly, is being withheld from the public. For further details with respect to the proposed action, see the redacted version of the December 4, 2009, letter submitted by the licensee on January 22, 2010. The non-proprietary, public version of this document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and

Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of February 2010.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3499 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298; NRC–2010–0061]

Nebraska Public Power District; Cooper Nuclear Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating License No. DPR–46, issued to Nebraska Public Power District (NPPD, the licensee), for operation of the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt NPPD from the required implementation date of March 31, 2010, for several new requirements of 10 CFR Part 73. Specifically, NPPD would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. NPPD has proposed an alternate full compliance implementation date of August 31, 2010, 5 months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the NPPD site.

The proposed action is in accordance with the licensee's application dated December 22, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the NPPD security system due to resource and logistical impacts of the fall 2009 refueling outage and other factors, including inclement weather.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Cooper Nuclear Station dated February 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on January 5, 2010, the NRC staff consulted with the Nebraska State official, Ms. J. Schmitt of the Office of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 22, 2009. Portions of the document contain security-related information and, accordingly, are not available to the public. Other parts of the document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor),

Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of February 2010.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3497 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on March 4–6, 2010, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 14, 2009, (74 FR 52829–52830).

Thursday, March 4, 2010, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Draft Final Interim Staff Guidance (ISG) on Fuel Cycle (ISG–7) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding draft final ISG on Fuel Cycle, NRC staff's resolution of public comments, and related matters.

10:15 a.m.–12 p.m.: Draft Final Regulatory Guide (RG) 1.141, "*Containment Isolation Provisions for Fluid Systems*" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final RG 1.141, "Containment Isolation Provisions for Fluid Systems," NRC staff's resolution of public comments, and related matters.

1 p.m.–2 p.m.: Draft Final Revision 1 to Regulatory Guide 4.11, "*Terrestrial Environmental Studies for Nuclear Power Stations*" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft Revision 1 to RG 4.11, "Terrestrial Environmental Studies for Nuclear Power Stations," NRC staff's resolution of public comments, and related matters.

2 p.m.–3:15 p.m.: "*Status of Rulemaking for Disposal of Depleted Uranium and Other Unique Waste Streams*" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of rulemaking efforts addressing disposal of depleted uranium and other unique waste streams, and related matters.

3:30 p.m.–5 p.m.: Draft ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS Report on Safety Research Program.

5 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this and the previous meeting (February 2010).

Friday, March 5, 2010, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: Digital Instrumentation and Control (I&C) Design Acceptance Criteria (DAC) Inspection Methodology (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Digital I&C DAC Inspection Methodology.

10:30 a.m.–12 p.m.: New Advanced Reactor Designs (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding new advanced reactor designs such as NuScale, Iris, Babcock and Wilcox Modular, Hyperion, Toshiba's 4S, and General Electric's Prism.

1:30 p.m.–3 p.m.: Meeting with the NRC Executive Director for Operations (Open)—The Committee will meet with the NRC Executive Director for Operations (EDO) and Deputy EDOs to discuss topics of mutual interest.

3 p.m.–4:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, including anticipated workload and member assignments, and related matters. [**Note:** A portion of this session may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]

4:40 p.m.–4:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

5 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, March 6, 2010, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Mr. Derek Widmayer, Cognizant ACRS Staff, (Telephone: 301–415–7366, E-mail: *Derek.Widmayer@nrc.gov*), five days before the meeting, if possible, so that

appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: February 17, 2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–3489 Filed 2–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Notice of Meeting

DATES: Weeks of February 22, March 1, 8, 15, 22, 29, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 22, 2010

Tuesday, February 23, 2010

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative).

Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3); Docket Nos. 50–003–LT–2, 50–247–LT–2, 50–286–LT–2, and 72–51–LT–2. (Request for Hearing on Extension of Time to Complete License Transfer) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

9:30 a.m. Briefing on Decommissioning Funding (Public Meeting) (Contact: Thomas Fredrichs, 301–415–5971).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 1, 2010—Tentative

Tuesday, March 2, 2010

9:30 a.m. Briefing on Uranium Recovery (Public Meeting) (Contact: Dominick Orlando, 301–415–6749).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 8, 2010—Tentative

There are no meetings scheduled for the week of March 8, 2010.

Week of March 15, 2010—Tentative

Tuesday, March 16, 2010

1:30 p.m. Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission on Grid Reliability (Public Meeting). (Contact: Kenn Miller, 301–415–3152).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 22, 2010—Tentative

There are no meetings scheduled for the week of March 22, 2010.

Week of March 29, 2010—Tentative

There are no meetings scheduled for the week of March 29, 2010.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

Additional Information

The Briefing on Regional Programs—Programs, Performance, and Future Plans previously scheduled on Tuesday, February 9, 2010, at 9:30 a.m. has been postponed.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

February 18, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–3665 Filed 2–19–10; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 25, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, February 25, 2010 will be:

Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 18, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–3685 Filed 2–19–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Electronic Game Card, Inc.; Order of Suspension of Trading

February 19, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electronic Game Card, Inc. ("EGMI") because of questions regarding the accuracy of assertions by EGMI, and by others, in financial disclosures to investors concerning, among other things, the company's assets.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on February 19, 2010, through 11:59 p.m. EST, on March 4, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–3643 Filed 2–19–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61521; File No. SR–NASDAQ–2010–008]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Prior Notification Requirements When Companies Release Material Information Outside of Nasdaq Market Hours

February 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the requirement for companies to provide prior notification to Nasdaq when releasing material information outside of Nasdaq market hours.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

5250. Obligations for Companies Listed on the Nasdaq Stock Market

(a) No change.

(b) Obligation to Make Public Disclosure.

(1) Except in unusual circumstances, a Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM–5250–1 *and the public release of the material information is made during Nasdaq market hours. If the public release of the material information is made outside of Nasdaq market hours, Nasdaq Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.* As described in IM–5250–1, prior notice to the MarketWatch Department must be made through the electronic disclosure submission system available at *http://www.nasdaq.net*, except in emergency situations.

(2)–(3) No change.

(c)–(f) No change.

IM–5250–1. Disclosure of Material Information

Rule 5250(b)(1) requires that, except in unusual circumstances, Nasdaq Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Nasdaq Companies must notify Nasdaq at least ten minutes prior to the release to the public of material information that involves any of the events set forth below *when the public release of the information is made during Nasdaq market hours (7 a.m. to 8 p.m. ET). If the public release of the material information is made outside of Nasdaq market hours, Nasdaq Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.* Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Nasdaq Companies remain obligated to disclose this information to Nasdaq upon request pursuant to Rule 5250(a).

Paragraph 2. No change.

Notification to Nasdaq MarketWatch Department

Nasdaq Companies must notify Nasdaq's MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news *when the public release of the information is made during Nasdaq market hours (7 a.m. to 8 p.m. ET). If the public release of the material information is made outside of Nasdaq market hours, Nasdaq Companies must notify MarketWatch of the*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

material information prior to 6:50 a.m. ET. Except in emergency situations, this notification must be made through Nasdaq's electronic disclosure submission system available at *http://www.nasdaq.net.* In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or Internet access; technical problems on either the Company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

If a Nasdaq Company repeatedly fails to either notify Nasdaq at least ten minutes prior to the distribution of material news *during market hours or prior to 6:50 a.m. ET for material news distributed outside of market hours,* or repeatedly fails to use the electronic disclosure submission system when Nasdaq finds no emergency situation existed, Nasdaq may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, Nasdaq will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

Paragraphs 1–3. No change.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public *when the public release of the information is made during Nasdaq market hours (7 a.m. to 8 p.m. ET). If the public release of the material information is made outside of Nasdaq market hours, Nasdaq Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.* It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, Nasdaq encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a)–(h) No change.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public *when the public release of the information is made during Nasdaq market hours (7 a.m. to 8 p.m. ET). If the public release of the material information is made outside of Nasdaq market hours, Nasdaq Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.* When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8–K, the Company will be required to provide prior notice to the MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Paragraph 2. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 5250(b)(1) and IM–5250–1, a Nasdaq-listed company is required, except in unusual circumstances, to make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. These rules also require the company to provide notice of such disclosure to Nasdaq's MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM–5250–1. Among other things, this prior notice allows the MarketWatch Department to assess whether it is appropriate to implement a trading halt to allow full dissemination of the news by the public and to maintain an orderly trading market.[5] Rule 5250(b)(1) and IM–5250–1 do not currently distinguish the prior notification requirement when public release of the information is made during or outside of Nasdaq market hours.

Nasdaq proposes to amend Rule 5250(b)(1) and IM–5250–1 to distinguish notifications made outside of market hours, when Nasdaq would not need to implement a trading halt. As revised, when the material information is made public outside of Nasdaq market hours, Nasdaq companies would be required to provide notification of the information to MarketWatch by 6:50 a.m. ET, which is ten minutes prior to the start of Nasdaq market hours. No change would be made for disclosures made during Nasdaq market hours (7 a.m. to 8 p.m. ET), when Nasdaq companies must provide notification to MarketWatch at least ten minutes prior to the public release of the information.

Nasdaq believes the proposed change is appropriate as there is no regulatory benefit to receiving the pre-notifications outside of market hours. In addition, Nasdaq believes that the proposed change would limit a potential conflict between the existing rule and the requirements in certain foreign jurisdictions, which may prohibit providing Nasdaq with advance notice of material disclosures.[6] The revised requirement would permit such disclosures outside of market hours without pre-notification to Nasdaq. Nonetheless, while advance notice is not required, Nasdaq believes it is important for listed companies to continue to provide notification to the Exchange of material information, even when the public release of the announcement is made outside of Nasdaq market hours, so that Nasdaq can evaluate any potential impact of the news on the company's listing.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Section 6(b)(5) of the Act,[8] in particular. The proposed change would continue to facilitate Nasdaq's ability to conduct timely reviews of company disclosures, thereby facilitating the operation of a free and open market, and protecting investors and the public

[5] *See* Rule 4120 for the Exchange's procedures with respect to trading halts pending dissemination of material news.

[6] For example, Nasdaq has been informed that pursuant to the Netherlands Act on the Supervision of the Securities Trade and the Netherlands Autoriteit Financiële Markten, when a company intentionally discloses material non-public information to a third party as part of the normal course of business, including to regulators or an exchange upon which the company's shares are listed, the Company must simultaneously disclose the information publicly.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

interest, while eliminating an unnecessary procedural requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that Nasdaq's proposed rule change is similar to and consistent with the NYSE's rule regarding pre-notification to the Exchange for release of material information,[13] and the Commission believes that the Nasdaq's proposed rule change raises no new regulatory issues. The Commission also believes that providing pre-notification to Nasdaq outside of market hours, except ten minutes prior to opening, provides no regulatory benefit, since such notifications would not be reviewed by Nasdaq staff overnight or until such time that Nasdaq staff was on duty, which is likely only shortly prior to the beginning of market hours. In addition, given that one of the primary purposes of this notice is to allow MarketWatch staff to assess whether it is appropriate to implement a trading halt, such notification would only be necessary shortly before the opening, as the rule contemplates, to allow Nasdaq staff to make this determination. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–008 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3394 Filed 2–22–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Section 202.06 of the NYSE Listed Company Manual, which requires pre-notification to the NYSE for disclosures "made shortly before the opening or during market hours (presently 9:30 a.m. to 5 p.m., New York time)."

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61522; File No. SR–ISE–2010–12]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Trading Hours for Foreign Currency Options

February 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 2210 regarding the trading hours for foreign currency options ("FX Options") traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend ISE Rule 2210 regarding the trading hours for FX Options traded on the Exchange. Currently, under ISE Rule 2210(a), FX Options may be traded on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern time, except on the last day of trading during expiration week, in which case trading ceases at 12 p.m. Eastern time. ISE now proposes to open trading in FX Options at 7:30 a.m. Eastern time, two hours earlier than the current opening time. In support of this proposed rule change, ISE will ensure that quotes and trades are disseminated over the Options Price Reporting Authority during the time FX Options are open for trading on the Exchange. Further, the Exchange notes that FX Options are listed and traded only on ISE. As such, (1) FX Options are not fungible with foreign currency options listed by any other exchange, and (2) orders in FX Options will not trade at inferior prices, thus preserving intermarket protection against trade-throughs.

In support of this proposed rule change, the Exchange notes that there are several market centers that account for a significant portion of all foreign exchange transactions and which are active in the foreign exchange markets prior to the Exchange's current opening time. By opening trading in FX Options at 7:30 a.m. Eastern time, ISE hopes to attract new participants and liquidity from Western Europe, specifically the United Kingdom. According to the Bank for International Settlements' Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in 2007, trading activity in the United Kingdom accounts for approximately 34% of foreign exchange transactions. Although foreign exchange trading occurs 24 hours a day, trading activity at each market center is consolidated into approximately 8–10 hours per day. In the United Kingdom, specifically in London, the most active trading times correspond to between 2 a.m. Eastern time and 12 p.m. Eastern time. In the United States, specifically in New York, trading is most active between 8 a.m. Eastern time and 5 p.m. Eastern time. The overlap in trading hours between the two market centers results in a period of concentrated liquidity and is often considered a peak time for transactions in the foreign exchange market. That hypothesis is also supported by the fact that key economic statistics for North America are traditionally released prior to 9:30 a.m. Eastern time.[5]

Foreign currency futures listed on the Chicago Mercantile Exchange ("CME") and the Intercontinental Exchange ("ICE") are available for trading virtually 24 hours a day. The CME also provides virtually an all day market for trading in options contracts on foreign currency futures.[6] Several ISE members are also members of CME and ICE, and actively trade foreign exchange derivative products at those two exchanges. ISE believes amending its rule to allow for an earlier opening will attract greater participation in the Exchange's FX Options.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is found in Section 6(b)(5). Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, permitting trading to begin earlier in the day will permit investors greater opportunity to participate in the market, thereby removing an impediment to trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) [7] of the Act and Rule 19b–4(f)(6) [8] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Bureau of Labor Statistics releases Consumer Price Index (CPI) data at 8:30 a.m. Eastern time, and the Bureau of Economic Analysis releases quarterly Gross Domestic Product data at 8:30 a.m. Eastern time. Similarly, Statistics Canada releases Canadian CPI data at 7 a.m. Eastern time.

[6] CME's trading hours are available at *http://www.cmegroup.com/trading_hours/fx-hours.html.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2010–12 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2010–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2010–12 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3465 Filed 2–22–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61524; File No. SR–NASDAQ–2010–015]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Apply Retroactively a Correction of a Typographical Error in Rule 7018

February 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing a proposed rule change to apply retroactively to the period from July 24, 2009 through January 25, 2010 the correction made by SR–NASDAQ–2010–014 of a typographical error[3] formerly in Rule 7018.[4] There is no proposed rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ recently submitted an immediately effective filing to correct a typographical error in Rule 7018.[5] The purpose of this filing is [sic] apply the correction of the typographical error retroactively to the period from July 24, 2009 through January 25, 2010.

In SR–NASDAQ–2009–072,[6] NASDAQ submitted a proposed rule change to make clerical changes designed to streamline and simplify Rule 7018. As stated in the "Purpose" section of NASDAQ's Form 19b–4 filing, "[n]one of the clerical changes will modify any fee assessed or credit earned for trading on the NASDAQ Market Center." However, due to a typographical error, Exhibit 5 introduced inaccuracies into the provisions of the rule describing the fees for orders in securities listed on the New York Stock Exchange ("NYSE") that are routed to other venues without attempting to execute in NASDAQ for the full size of the order prior to routing. This portion of the fee schedule had previously been divided between sections governing fees for orders in NYSE-listed securities executed at NYSE and fees for orders executed at other venues. Both sections had included catch-all provisions governing "other" orders that did not fit into more defined categories of routed orders; these catch-all provisions apply specifically to directed orders that are not designated as intermarket sweep orders (*i.e.,* immediate-or-cancel orders that are directed to route to a venue specified by the member, and that may be executed by the receiving venue only if its quotation is at the national best bid or offer). In the case of such orders routed to NYSE, the fee is either $0.0020 per share executed, or $0.0019 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided. In the case of such orders routed to other venues, the fee is $0.0035 per share executed. However, language describing the fee for routing to other venues was

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the "typographical error" is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

[4] *See* SR–NASDAQ–2010–014 (January 26, 2010), Securities Exchange Act Release No. 61515 (February 12, 2010).

[5] SR–NASDAQ–2010–014 (January 26, 2010).

[6] Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR–NASDAQ–2009–072).

inadvertently deleted, while language describing the fee for routing to NYSE was moved but without language that had formerly limited its applicability to orders sent to NYSE. Accordingly, a reader of the amended rule may conclude that the fee of $0.0020 or $0.0019 per share executed is applicable to "other" orders routed to venues other than NYSE. [7]

As noted above, however, the filing that introduced this error in Rule 7018 stated that it was not modifying any fees or credits, and in fact, was filed as a "stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under SEC Rule 19b–4(f)(1) [8] rather than a fee change under SEC Rule 19b–4(f)(2).[9] Moreover, NASDAQ's intent not to modify fees through SR–NASDAQ–2009–072 was reflected in the Commission's notice of the filing on the SEC Web site [10] and in the **Federal Register,**[11] and the applicable fees have been accurately described in the pricing schedule that appears on NASDAQ's Web site.[12] NASDAQ has been billing members in accordance with the correct fees since the effective date of SR–NASDAQ–2009–072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee. NASDAQ submitted SR–NASDAQ–2010–014[13] on an immediately effective basis to correct the error and is now submitting this filing to seek Commission approval to apply the correction retroactively to the period from July 24, 2009 through January 25, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(4) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The proposed rule change will ensure that a recently filed correction of a typographical error in NASDAQ Rule 7018 is applied retroactively throughout the entire period when the error was in the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2010–015 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3467 Filed 2–22–10; 8:45 am]

BILLING CODE 8011–01–P

[7] The Commission expects all SROs to carefully review proposed rule changes before they are filed with the Commission.

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See http://www.sec.gov/rules/sro/nasdaq/2009/34-60430.pdf.*

[11] *See* Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR–NASDAQ–2009–072).

[12] *See http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[13] SR–NASDAQ–2010–014 (January 26, 2010).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61523; File No. SR–CBOE–2010–013]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the CBSX Market Data Infrastructure Fee

February 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend the CBOE and CBSX Fees Schedules relating to the CBSX Market Data Infrastructure Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange charges CBSX market participants a monthly fee to recoup fees the Exchange pays a third party market data vendor and other parties to help establish facilities at the Exchange through which the vendor can provide CBSX participants with certain market data.[5] The fee has been amended three times.[6] The current amount of the fee is $10,800 divided by the number of CBSX participants receiving the data.

The Exchange proposes to amend the fee in a couple of respects. First, the Exchange proposes to amend the CBSX Fees Schedule to remove the current fee amount and replace it with a statement that the Exchange will pass-through to participants receiving the data the total costs incurred by the Exchange to provide the market data infrastructure. Each participant would continue to be assessed on a monthly basis an amount equal to the Exchange's total monthly cost divided by the number of participants receiving the data. The Exchange believes this change is reasonable and appropriate in that the Exchange pays several third party costs (such as for equipment upgrades and connectivity) and these costs can vary frequently. The Exchange represents that any fee passed through to participants pursuant to this filing will reflect only the actual costs incurred by the Exchange in providing the market data infrastructure. Due to certain fixed costs incurred by the Exchange, each participant receiving the data as of February 15, 2010 will be obligated to pay its share of the fee through June 30, 2010, even if such participant terminates its receipt of the data prior to June 30, 2010.

Second, the Exchange proposes to add the fee to the CBOE Fees Schedule (under "Miscellaneous Fees") so that the fee would also apply to any CBOE member receiving the data that is not also a CBSX participant. Thus, if in addition to CBSX participants any CBOE member that is not also a CBSX participant receives the data, the fee would be divided by the number of CBOE members and CBSX participants receiving the data.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[7] in general, and furthers the objectives of Section 6(b)(4) [8] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed rule change would help the Exchange to continue providing its members with an infrastructure for receiving certain third party market data by allowing the Exchange to pass-through its infrastructure costs in a more efficient manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of [sic] purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007).

[6] *See* Exchange Act Release No. 56000 (July 2, 2007), 72 FR 37554 (July 10, 2007), Exchange Act Release No. 57472 (March 11, 2008), 73 FR 14515 (March 18, 2008), and Exchange Act Release No. 61121 (December 7, 2009), 74 FR 66178 (December 14, 2009).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–013 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3468 Filed 2–22–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61520; File No. SR–NYSE–2010–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Waiver of all Transaction Fees for Shares Executed on the NYSE MatchPoint[SM] System

February 16, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 29, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the waiver of all transaction fees for shares executed on the NYSE MatchPoint[SM] ("NYSE MatchPoint" or "MatchPoint") system effective February 1, 2010 through March 31, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the waiver of all transaction fees for shares executed on the MatchPoint system, which will be effective from February 1, 2010 through March 31, 2010. The NYSE 2010 Price List will reflect this extension of the fee waiver.

Background

On January 7, 2009, the Exchange filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint system, effective until February 28, 2009.[4] The temporary equity transaction fee was extended numerous times since the original filing[5] and it was in effect until January 7, 2010. On January 7, 2010, the Exchange proposed a transaction fee holiday waiving all MatchPoint transaction fees under the temporary equity transaction fee schedule until January 29, 2010 ("transaction fee waiver").[6] Each such filing was effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4.[8]

The Exchange believes that an extension of the transaction fee waiver will continue to induce users to enter more single-sided volume[9] into the MatchPoint system, which benefits all participants in MatchPoint, since it increases the likelihood of a match during the matching sessions (*i.e.,* intra-day and after hours matching sessions). The transaction fee waiver will apply to all Exchange members that access MatchPoint. Through this fee filing, the Exchange is seeking to extend the temporary transaction fee waiver from February 1, 2010 through March 31, 2010.

It is intended that new MatchPoint transaction fees will be in effect on or before April 1, 2010, after the transaction fee waiver terminates. The new transaction fees will also provide incentives for adding volume to the MatchPoint system.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")[10] for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that an extension of the fee waiver for all MatchPoint executions is reasonable in that it provides a significant incentive for users to add volume into the MatchPoint system. Adding volume to the MatchPoint system will increase a user's likelihood of obtaining an execution. Increased volume and trading activity will improve the overall

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009) (SR–NYSE–2009–01).

[5] *See* Securities Exchange Act Release No. 59491 (March 3, 2009) 74 FR 10107 (March 9, 2009) (SR–NYSE–2009–20); *see* Securities Exchange Act Release No. 59864 (May 5, 2009) 74 FR 22194 (May 12, 2009) (SR–NYSE–2009–44); *see* Securities Exchange Act Release No. 60278 (July 10, 2009) 74 FR 34615 (July 16, 2009) (SR–NYSE–2009–67); *see* Securities Exchange Act Release No. 60439 (August 5, 2009) 74 FR 40270 (August 11, 2009) (SR–NYSE–2009–78) and *see also* Securities Exchange Act Release No. 60949 (November 6, 2009) 74 FR 58665 (November 13, 2009) (SR–NYSE–2009–110).

[6] *See* Securities Exchange Act Release No. 61350 (January 14, 2010) 75 FR 3767 (January 22, 2010) (SR–NYSE–2010–01).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] Executions in the MatchPoint system occur when buy and sell interest in a security is entered on a matched basis (both buy and sell sides submitted together) or when interest submitted in the system by one user matches against contra side interest submitted by another user.

[10] 15 U.S.C. 78a.

market for customers. The transaction fee waiver is also designed to make the system more competitive, which will further improve the quality of the market and benefit customers. Finally, the transaction fee waiver is equitable because it is available to all Exchange members that access the MatchPoint system, and it applies to all MatchPoint executions. The extended fee waiver will be in effect from February 1, 2010 until March 31, 2010.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–06 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3466 Filed 2–22–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61519; File No. SR–NYSEArca-2010–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the WisdomTree Real Return Fund

February 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust (the "Trust") under NYSE Arca Equities Rule 8.600: WisdomTree Real Return Fund (the "Fund"). The shares of the Fund are collectively referred to herein as the "Shares." The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Web site at *http://www.nyx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600,[3] which governs the listing and trading of "Managed Fund Shares," on the Exchange.[4] The Fund will be an actively-managed exchange traded fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company.[5]

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser to the Fund ("Advisor").[6] WisdomTree Asset Management is not affiliated with any broker-dealer. Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[7] In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Mellon Capital Management Corporation ("Mellon") serves as the sub-adviser for the Fund. Mellon is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Bank of New York Mellon is the administrator, custodian and transfer agent for the Fund. ALPS Distributors, Inc. serves as the distributor for the Fund.[8]

According to the Registration Statement, the Fund seeks to provide investors with total returns that exceed the rate of inflation over long-term investment horizons. The Fund's investment objective is non-fundamental and may be changed without shareholder approval. To achieve its objective, the Fund intends to invest in a portfolio of inflation-linked securities, such as U.S. Treasury Inflation Protected Securities ("TIPS"), and other investment grade fixed income securities. The Fund will have targeted exposure to commodities and commodity strategies. Using this approach, the Fund seeks (i) to take advantage of the potential inflation-protection benefits of inflation-linked bonds and commodity instruments and (ii) to provide income.

While the Fund intends to invest up to 70% or more of the value of its portfolio in TIPS, the Fund may invest in other types of inflation-linked fixed income securities. For example, the Fund may invest in investment grade, floating-rate fixed income securities linked to U.S. inflation rates that are issued by the U.S. government, government agencies or corporations. The Fund may invest in inflation-linked swaps. An inflation-linked swap is an agreement between two parties to exchange payments at a future date based on the difference between a fixed

[3] NYSE Arca Equities Rule 8.600(c)(1) provides that a Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca-2008–25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges ("UTP"), of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR–NYSEArca-2008–28) (order approving trading on the Exchange pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca-2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca-2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca-2009–55) (order approving Exchange listing and trading of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca-2009–74) (order approving listing of four Grail Advisors RP ETFs); 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR–NYSEArca-2009–83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca-2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

[5] *See* Registration Statement on Form N–1A for the Trust filed with the Securities and Exchange Commission on October 28, 2009 (File Nos. 333–132380 and 811–21864) (the "Registration Statement"). The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

[6] WisdomTree Investments, Inc. ("WisdomTree Investments") is the parent company of WisdomTree Asset Management. The Exchange represents that WisdomTree Asset Management, as the investment adviser of the Fund, and Mellon Capital Management Corporation, as the sub-adviser of the Fund, and their respective related personnel, are subject to Rule 204A–1 (17 CFR 240.10A–3) [sic] under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1) (the "Advisers Act"). This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] An investment adviser to an open-end fund is required to be registered under the Advisers Act. As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[8] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). *See* Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812–13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Funds will comply with the Federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

payment and a payment linked to the inflation rate at future date. The Fund also may invest in securities linked to inflation rates outside the U.S., including securities or instruments linked to rates in emerging market countries. The Fund may invest a portion of its assets in fixed-income securities that are not linked to inflation, such as U.S. government securities. While the Fund intends to invest primarily in investment grade securities, the Fund may invest up to 10% of its net assets in securities rated "BB" or lower by at least two nationally recognized statistical rating organizations ("NSROs") [sic] or if unrated, deemed to be of equivalent quality.

The Fund may invest in securities with effective or final maturities of any length. The Fund will seek to keep the average effective duration of its portfolio between two and ten years. Effective duration is an indication of an investment's interest rate risk or how sensitive an investment or a fund is to changes in interest rates. Generally, a fund or instrument with a longer effective duration is more sensitive to interest rate fluctuations and therefore more volatile, than a fund with a shorter effective duration. The Fund may adjust its portfolio holdings or average effective duration based on actual or anticipated changes in interest rates or credit quality.

According to the Registration Statement, the Fund intends to have targeted exposure to commodities across a number of sectors, such as energy, precious metals and agriculture. While the Fund seeks exposure to commodity markets, it generally does not expect to invest in commodities directly in the spot market. The Fund intends to seek exposure to commodity markets primarily through its investments in the WisdomTree Real Return Investment Portfolio, Inc. (the "Subsidiary"), a wholly-owned subsidiary controlled by the Fund which is organized in the Cayman Islands. In addition, the Fund may invest a more limited portion of its assets directly in commodity-linked instruments. The Fund and the Subsidiary may invest in swaps on commodities or commodity indexes, and may also invest in commodity-based structured notes and exchange-traded commodity-based derivative products that provide commodity returns (collectively, "Commodity-Linked Instruments"). The Fund and Subsidiary may engage in commodity swaps or commodities index swaps in which fixed- or variable-rate payments on commodity returns or commodity index returns are exchanged.[9] The Fund represents that investments in Commodity-Linked Instruments must be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Fund intends to invest up to 25% of its assets in the Subsidiary. The Subsidiary intends to invest all of its assets in Commodity-Linked Instruments and/or fixed income securities that serve as collateral for its commodity exposure. The Subsidiary's investments will be consolidated into the Fund's financial statements and the Fund's and Subsidiary's holdings will be publicly available on a daily basis.

According to the Registration Statement, the Fund's use of the Subsidiary is designed to help the Fund achieve exposure to commodity returns in a manner consistent with the requirements of Federal tax laws applicable to regulated investment companies, such as the Fund. These requirements limit the exposure of the Fund to commodities and Commodity-Linked Instruments. The Subsidiary has the same investment objective as the Fund. Unlike the Fund, the Subsidiary is not restricted in the level of investments it may make in commodities and Commodity-Linked Instruments. The Subsidiary is otherwise subject to the same investment restrictions as the Fund, and will operate in the same manner as the Fund with regard to applicable compliance policies and procedures (other than investments in Commodity-Linked Instruments). Although the Subsidiary is not registered under the 1940 Act, WisdomTree Asset Management manages both the Fund and the Subsidiary and the Fund's Board of Trustees oversees the operation of the Fund and its investment in the Subsidiary. The Registration Statement states that, since the Subsidiary's investments are consolidated into the Fund's, the Fund's combined holdings must comply with the 1940 Act. The Fund is the sole shareholder of the Subsidiary and does not expect shares of the Subsidiary to be offered or sold to other investors.

The Fund and the Subsidiary will not invest in non-U.S. equity securities, except that the Fund will invest in shares issued by the Subsidiary.

According to the Registration Statement, the Fund is considered to be "non-diversified" and is not limited by the 1940 Act with regard to the percentage of its assets that may be invested in the securities of a single issuer. As a result, the Fund may invest more of its assets in the securities of a single issuer or a smaller number of issuers than if it were classified as a diversified fund. Therefore, the Fund may be more exposed to the risks associated with and developments affecting an individual issuer or a small number of issuers than a fund that invests more widely, which may have a greater impact on the Fund's volatility and performance.

The Fund does, however, intend to maintain the level of diversification necessary to qualify as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended. The Subchapter M diversification tests generally require that (i) a Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are controlled by a Fund and that are engaged in the same, similar or related trades or businesses, and (ii) at least 50% of a Fund's total assets consist of cash and cash items, U.S. government securities, securities of other RICs and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of a Fund's total assets and 10% of the outstanding voting securities of such issuer. These tax requirements are generally applied at the end of each quarter of a Fund's taxable year.

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.[10] The liquidity of securities purchased by the Fund which are eligible for resale pursuant to Rule 144A will be monitored by the Fund on an ongoing basis. In the event that such a security is deemed to be no longer liquid, the Fund's holdings will be reviewed to determine what action, if any, is

[9] As described in the Registration Statement, structured notes are debt instruments, typically issued by a bank, that are designed to provide cash flows linked to the value of commodities, commodity indexes or the value of commodity futures and options contracts. They may be listed and traded on a securities exchange or traded over-the-counter. Exchange-traded commodity-based derivative products include funds and trusts that invest in commodities or provide exposure to commodities whose units or shares are traded on major securities exchanges in the U.S. or throughout the world.

[10] For these purposes, an "illiquid" security is deemed illiquid if it can not be sold or disposed of in the ordinary course of business within seven days at a price that approximates fair market value.

required to ensure that the retention of such security does not result in the Fund having more than 15% of its assets invested in illiquid or not readily marketable securities.

The Fund may invest in deposits and other obligations of U.S. and non-U.S. banks and financial institutions; high-quality money market instruments; short-term obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; and sovereign debt obligations. The Fund may hold a significant portion of its assets in inflation indexed bonds and in floating rate and adjustable rate obligations, such as demand notes, bonds, and commercial paper. The Fund may hold corporate debt obligations with less than 397 calendar days remaining to maturity; mortgage backed and asset-backed securities. The Fund may enter into mortgage "dollar roll" transactions with selected banks and broker-dealers. The Fund may use derivative instruments as part of its investment strategies, may engage in "short sale" transactions; may hold commodity-linked derivative instruments; may invest in investments denominated in non-U.S. currencies, or in securities (such as foreign currency forward and foreign currency futures contracts) that provide exposure to such currencies, currency exchange rates or interest rates denominated in such currencies; may enter into swap agreements, including interest rate swaps and currency swaps; may enter into U.S. or foreign futures contracts and options and options on futures contracts; and may enter into swap agreements and reverse repurchase agreements. The Fund may invest in the securities of other investment companies (including exchange traded funds and money market funds) to the extent permitted by the 1940 Act. The Fund may invest in debt securities and other instruments of companies that are considered to be in the financial sector, including commercial banks, brokerage firms, diversified financial services, a variety of firms in all segments of the insurance industry (such as multi-line, property and casualty, and life insurance) and real estate related companies.

The Shares

According to the Registration Statement, the Fund issues and redeems Shares on a continuous basis at net asset value ("NAV")[11] only in large blocks of shares, typically 50,000 shares or more ("Creation Unit Aggregations"), in transactions with Authorized Participants. Only institutional investors who have entered into an Authorized Participant agreement [sic] purchase or redeem Creation Unit Aggregations. The consideration for purchase of Creation Unit Aggregations of the Fund generally consists of the in-kind deposit of a designated portfolio of fixed income securities (the "Deposit Securities") and an amount of cash (the "Cash Component"). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of the Fund.

Each business day prior to the opening of trading the Fund will publish the specific securities and designated amount of cash included in that day's basket for the Fund through the National Securities Clearing Corporation ("NSCC") or other method of public dissemination. The Fund reserves the right to accept or pay out a basket of securities or cash that differs from the published basket. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form.

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the Continuous Net Settlement System of the NSCC or a DTC participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit Aggregations.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

[11] The NAV of the Fund's shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time (the "NAV Calculation Time"). NAV per share is calculated by dividing the Fund's net assets by the number of Fund shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

Availability of Information

The Fund's Web site (*http://www.wisdomtree.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for each [sic] Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[12] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session[13] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio")[14] held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[15] The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the

[12] The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and/or its service providers.

[13] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[14] The Exchange notes that NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) provides that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

[15] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Exchange. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.

On a daily basis, the Adviser [sic] will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3[16] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value per share for the Fund will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Funds will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. Such rule provides that, if the Portfolio Indicative Value (as defined in Rule 8.600(c)(3)) of a series of Managed Fund Shares is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Corporation will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.[17]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

[16] *See* 17 CFR 240.10A–3.

[17] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [18] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

[18] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2010–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–04 and should be submitted on or before March 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3464 Filed 2–22–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61517; File No. SR–FINRA–2010–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Codes of Arbitration Procedure To Provide for Attorney Representation of Non-Party Witnesses in Arbitration

February 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 12602 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13602 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to provide that a non-party witness may be represented by an attorney at an arbitration hearing while the witness is testifying.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend Rules 12602 and 13602 of the Codes to provide that a non-party witness has the right to be represented by an attorney at an arbitration proceeding held in a United States hearing location while the witness is testifying. The attorney would have to be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless State law prohibits such representation. Under the proposed rule change, the panel would determine the extent to which the attorney could participate at the hearing.

The Codes expressly allow a party to be represented at any stage in an arbitration proceeding.[3] They do not address representation of a non-party witness. FINRA believes that a non-party witness should be entitled to be represented by an attorney while he or she is testifying. Currently, under the Codes, the arbitration panel determines if a non-party witness' attorney may attend a hearing.[4] A non-party witness may testify at a hearing: (1) Voluntarily; (2) pursuant to a subpoena; [5] or (3) in compliance with an arbitrator's order for an associated person to appear and give testimony.[6]

While the proposed rule change would apply to all non-party witnesses, in many instances when a non-party is testifying at a FINRA arbitration hearing, the non-party witness is an associated person who handled the customer claimant's account, but was not named as a respondent in the case. Under the current Codes, the arbitrators determine whether an associated person can bring an attorney to a hearing. FINRA does not believe that arbitrators have been denying requests by non-party witnesses to be represented by counsel while testifying; nevertheless, to assure due process in its dispute resolution forum, FINRA believes that the Codes should expressly provide that a non-party witness is entitled to be represented by an attorney while testifying.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would enhance fairness in the arbitration process by ensuring that a non-party witness may be represented by counsel during his or her testimony.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[3] Rules 12208 and 13208 (Representation of Parties) provide that parties have the right to be represented by an attorney at any stage in an arbitration proceeding. They also allow parties to be represented by a person who is not an attorney subject to certain limitations.

[4] Rules 12602 and 13602 (Attendance at Hearings) provide that parties and their representatives are entitled to attend all hearings and that, absent persuasive reasons to the contrary, expert witnesses should also be permitted to attend all hearings. The panel determines who else may attend any or all hearings.

[5] Rules 12512 and 13512 (Subpoenas) provide that arbitrators have the authority to issue subpoenas for the production of documents or the appearance of witnesses. The rules permit a party to make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party.

[6] Rules 12513 and 13513 (Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas) provide that the panel may order the appearance of any employee or associated person of a FINRA member.

[7] 15 U.S.C. 78o–3(b)(6).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–006 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3393 Filed 2–22–10; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed System of Records and Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed System of Records and Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records and routine uses applicable to this system of records entitled, the *Administrative Law Judge/Public Alleged Misconduct Complaints System,* 60–0356 (the *ALJ/PAMC* system of records). We will use the information covered by the system of records to manage and monitor complaints filed against Administrative Law Judges (ALJ). We discuss the system of records and routine use disclosures in the Supplementary Information section below. We invite public comments on this proposal.

DATES: We filed a report of the *ALJ/PAMC* system of records and routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 12, 2010. The *ALJ/PAMC* system of records and routine uses will become effective on March 14, 2010, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested persons may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments we receive will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Earlene Whitworth Hill, Social Insurance Specialist, Disclosure Policy Development and Services Division I, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–1817, e-mail: *earlene.whitworth.hill@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the ALJ/PAMC System of Records

A. General Background

Our Office of Disability Adjudication and Review (ODAR) includes a nationwide field organization staffed with ALJs who conduct impartial hearings and make decisions on appeals filed by claimants and their advocates or representatives on their behalf. Claimants and their advocates or representatives may file a complaint against an ALJ if they believe the ALJ was biased or engaged in improper conduct. Persons may make complaints in writing to our Office of the Chief Administrative Law Judge and to our regional and hearing offices. We also receive complaints through our Appeals Council, agents at our National 800 Telephone Number Network, our Office of the Inspector General Hotline, and congressional offices on behalf of their constituents. We review, investigate, and respond to such complaints.

At present, we do not have a good mechanism to track complaints about ALJs from initiation to resolution. This weakness makes it difficult for us to identify and resolve service delivery issues, and also impairs customer service. This system of records will help us improve service to the public by creating a centrally managed, electronic method to collect, monitor, and retrieve information concerning complaints about ALJs.

The *ALJ/PAMC* system of records will:

- Provide us with information to manage and respond to complaints, which in turn will help us monitor and improve customer service and reduce manual work;
- Provide us with information to process, review, or investigate complaints filed;
- Provide us with information related to the complaint, including the name of the claimant and other identifying information, the name of the claimant's advocate or representative, if any, and information about the ALJ who allegedly committed misconduct; and
- Provide us with management information to document, monitor, and track complaints about ALJs, to identify patterns of improper ALJ behavior that may require further review and action, and to assist us in deterring recurring incidences of ALJ bias or misconduct.

B. Collection and Maintenance of the Data for the ALJ/PAMC System of Records

We will collect and maintain information from complaints filed against ALJs in an electronic system covered by the *ALJ/PAMC* system of records. We will collect information relating to the complaint, case analyses, results of the review or investigation, location of the hearing or regional office, ALJ duty station, Federal court if the complaint is raised at the Federal court level, and copies of relevant correspondence.

We will collect information about the claimant (or claimant's advocate or representative) filing the complaint such as name, Social Security number (SSN), date of birth, address, gender, race or ethnic background (if readily available), and relevant claims-related information. We will also collect information about the ALJ named in the complaint, such as name, ALJ assigned number, and tracking and control log numbers.

Since we will retrieve information from this system using names and other personal identifiers, the *ALJ/PAMC* information collection is a system of records, as defined by the Privacy Act.

II. Routine Use Disclosures of Data Covered by the ALJ/PAMC System of Records

A. Routine Use Disclosures

We propose to establish the following routine uses of information that will be covered by the *ALJ/PAMC* system of records.

1. To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

We will disclose information under this routine use only when the Office of the President makes an inquiry relating to information contained in this system of records and indicates that it is acting on behalf of the person whose record is requested (*e.g.,* ALJ, claimant, claimant's advocate or representative, if any).

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a

[8] 17 CFR 200.30–3(a)(12).

record or a third party on that person's behalf.

We will disclose information under this routine use only when a member of Congress, or member of his or her staff, makes an inquiry relating to information contained in this system of records and indicates that he or she is acting on behalf of the person whose record is requested.

3. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) The agency or any of our components; or

(b) Any agency employee in his or her official capacity; or

(c) Any agency employee in his or her individual capacity when DOJ (or the agency when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect our operations or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

We will disclose information under this routine use as necessary to enable DOJ to effectively defend us, our components, or our employees in litigation, when the use of information covered by this system of records is relevant and necessary to the litigation and compatible with the purpose of the information collection. We will also disclose information to ensure that courts, other tribunals, and parties before such courts or tribunals, have appropriate information when relevant and necessary.

4. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they are performing work for us as authorized by law, and they need access to information in our records in order to perform their assigned agency duties.

We will disclose information under this routine use only when we use the services of student volunteers and participants in certain educational, training, employment, and community service programs when they need access to information covered by this system of records to perform their assigned agency duties.

5. To the Equal Employment Opportunity Commission (EEOC) when they request information in connection with an investigation into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

We will disclose information about our employees under this routine use to the EEOC, as necessary, to assist in reassessing requests for reasonable accommodations; to assist in investigations into alleged or possible discriminatory practices in the Federal sector; to combat and prevent fraud, waste, and abuse under the Rehabilitation Act of 1973; and to assist the Commission in carrying out its other functions.

6. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when they request information in connection with investigations of allegations of unfair practices or of other matters before an arbitrator or the Federal Service Impasses Panel.

We will disclose information about our employees under this routine use, as necessary, to the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator, when all or part of the allegations involve the information covered by the *ALJ/PAMC* system of records.

7. To the Office of Personnel Management, the Merit Systems Protection Board, or the Office of Special Counsel when they request information in connection with appeals, special studies of the civil service and other merit systems, review of those agencies' rules and regulations, investigation of alleged or possible prohibited personnel practices, and for other such functions of these agencies as may be authorized by law.

We will disclose information about our employees under this routine use, as necessary, to the Office of Personnel Management, the Merit Systems Protection Board, or to the Office of Special Counsel, when all or part of the allegations in the appeal or action involve the information covered by the *ALJ/PAMC* system of records.

8. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

a. To enable them to ensure the safety of our employees and customers, the security of our workplace, and the operation of our facilities; or

b. To assist investigations or prosecutions with respect to activities that affect such safety, security, or activities that disrupt the operation of our facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when they need information to respond to, investigate, or prevent activities that jeopardize the security and safety of the public, employees, or our workplaces, or that otherwise disrupt the operation of our facilities. We will disclose information to assist in prosecuting persons charged with violating a Federal, State, or local law in connection with such activities.

9. To contractors and other Federal agencies, as necessary, to assist us in efficiently administering our programs.

We will disclose information under this routine use only in situations where we enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to information covered by the *ALJ/PAMC* system of records.

10. To the appropriate Federal, State, and local agencies, entities, and persons when: (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, risk of identity theft or fraud, or harm to the security or integrity of this system or our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

We will disclose information under this routine use specifically in connection with response and remediation efforts in the event of an unintentional release of agency information, otherwise known as a "data security breach." This routine use will protect the interests of the people whose information is at risk by allowing us to take appropriate steps to facilitate a timely and effective response to a data breach. The routine use will also help us improve our ability to prevent, minimize, or remedy any harm that may result from a compromise of data covered by this system of records.

11. To a Federal, State, and local professional licensing board, at our initiative or at the request of the licensing board, when such records indicate a violation of ethical conduct by a current or former employee who is seeking to be licensed or is licensed before the professional board.

We will disclose information under this routine use to a Federal, State, or local licensing board, at our initiative, or at the request of the licensing board, regarding the facts surrounding a potential ethical violation by a current or former employee who is licensed or seeking to be licensed before a professional board.

12. To a Federal or State agency in response to its request, or at our initiative, in connection with decisions to hire an employee, issue a security clearance, conduct a security or suitability investigation of a person, classify a job, award a contract, or regarding the requesting agency's decision to issue a license, grant, or other benefit. We may disclose for lawful statutory administrative or investigative purposes to the extent that the information is relevant and necessary to the requesting agency's decision.

We will disclose information in response to a request, or at our initiative, in connection with any of the circumstances specified in the routine use above. The request pertaining to such circumstances must meet lawful statutory administrative or investigative purposes and be consistent with our authority for maintaining the record.

13. To officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting conditions of employment.

We will disclose information about our employees under this routine use, to the officials above as necessary, when all or part of the information requested involves information covered by the *ALJ/PAMC* system of records.

14. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law, for their use in conducting records management studies.

We will disclose information under this routine use only when it is necessary for GSA and NARA to have access to the information covered by this system of records. The Administrator of GSA and the Archivist of NARA are authorized by Title 44 U.S.C. 2904, as amended, to promulgate standards, procedures, and guidelines regarding records management and to conduct records management studies. Title 44 U.S.C. 2906, as amended, provides that GSA and NARA are authorized to inspect Federal agencies' records for records management purposes and that agencies are to cooperate with GSA and NARA.

B. Compatibility of Routine Uses

We can disclose information when the disclosure is required by law (20 CFR 401.120). We can also disclose information when the purpose is compatible with the purpose for which we collect the information and the disclosure is supported by a published routine use (20 CFR 401.150). The disclosures under routine uses numbers 1 through 13 will ensure that we efficiently perform our functions relating to the purpose and administration of the *ALJ/PAMC* system of records. Federal law requires the disclosures that we make under routine use number 14. We will disclose information under routine use number 14 to the extent another Federal law does not prohibit the disclosure. For example, the Internal Revenue Code generally prohibits us from disclosing tax return information which we receive to maintain individual earnings records. Therefore, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Information Covered by the ALJ/PAMC System of Records

We will maintain information covered by the *ALJ/PAMC* system of records in electronic and paper form. We will keep paper records in locked cabinets or in other secure areas. We will safeguard the security of the electronic information covered by the *ALJ/PAMC* system of records by requiring the use of access codes to enter the computer system that will house the data. We will permit only our authorized employees and contractors, who require the information to perform their official duties to access the information covered by the *ALJ/PAMC* system of records.

We annually provide all our employees and contractors with appropriate security awareness and training that includes reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must annually sign a sanction document acknowledging their accountability for inappropriately accessing or disclosing such information.

IV. Effects of the ALJ/PAMC System of Records on the Rights of Individuals

We will maintain only information that is necessary to carry out our official functions under the Social Security Act and other applicable Federal statutes in the electronic system covered by the *ALJ/PAMC* system of records. We will employ safeguards to protect the confidentiality of all personally identifiable information in our possession. We will adhere to the provisions of the Privacy Act and other applicable Federal statutes that govern our use and disclosure of information that is covered by the *ALJ/PAMC* system of records. We will disclose information under the routine uses discussed in this publication only as necessary to accomplish the stated purposes. Therefore, we do not anticipate that the *ALJ/PAMC* system of records or routine use disclosures will have any unwarranted adverse effect on the privacy or other rights of persons.

Dated: February 12, 2010.

Michael J. Astrue,

Commissioner.

SYSTEM NUMBER:

60–0356.

SYSTEM NAME:

Administrative Law Judge/Public Alleged Misconduct Complaints (ALJ/PAMC) System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All SSA Office of Disability Adjudication and Review (ODAR) regional offices and the Office of the Chief Administrative Law Judge in Falls Church, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Administrative Law Judges (ALJ) accused of misconduct or bias in connection with processing a claimant's case and the claimant who was the subject of the alleged misconduct or bias. If the claimant's advocate or representative files a complaint that an ALJ is biased against him or her, it may also cover a claimant's advocate or representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information derived from complaints filed against ALJs; the information we

gather in processing, reviewing, or investigating such complaints; the results of the review or investigation; case analyses; the information related to the hearing office, the regional office, and the ALJ's duty station; information related to the alleged complaint; the Federal court, if a complaint is raised at the Federal court level; and copies of relevant correspondence. The *ALJ/PAMC* system may contain the following information about the claimant who filed the complaint: name, Social Security number (SSN), date of birth, address, and relevant claims-related information. In addition, the *ALJ/PAMC* system may contain information regarding the claimant's gender and race or ethnic background, if that information is provided and is a basis for the complaint. The *ALJ/PAMC* system may contain information related to the claimant's advocate or representative that is derived from the complaint (*e.g.,* name, gender, race and/or ethnic background, if provided and it is a basis for the complaint). The *ALJ/PAMC* system may also contain the following information about the ALJ associated with the complaint: name, ALJ assigned number, and our assigned tracking and control log numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205 and 1631(d)(1) of the Social Security Act, as amended.

PURPOSE(S):

We will use the information covered by the system of records to manage and monitor complaints filed against ALJs. The information will:

- Provide us with information to manage and respond to complaints, which in turn will help us monitor and improve customer service and reduce manual work;
- Provide us with information to process, review, or investigate complaints filed;
- Provide us with information related to the complaint, including the name of the claimant and other identifying information, the name of the claimant's advocate or representative, if any, and information about the ALJ who allegedly committed misconduct; and
- Provide us with management information to document, monitor, and track ALJ complaints, to identify patterns of improper ALJ behavior that may require further review and action, and to assist us in deterring recurring incidences of ALJ bias or misconduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Routine use disclosures are as indicated below.

1. To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

3. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) The agency or any of our components;

(b) Any agency employee in his or her official capacity;

(c) Any agency employee in his or her individual capacity when DOJ (or the agency when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect our operations or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

4. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they need access to information in our records in order to perform their assigned agency duties.

5. To the Equal Employment Opportunity Commission (EEOC) when they request information in connection with an investigation into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

6. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices or of other matters before an arbitrator or the Federal Service Impasses Panel.

7. To the Office of Personnel Management, the Merit Systems Protection Board, or the Office of Special Counsel when they request information in connection with appeals, special studies of the civil service and other merit systems, review of those agencies' rules and regulations, investigation of alleged or possible prohibited personnel practices, and for other such functions of these agencies as may be authorized by law.

8. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

a. To enable them to ensure the safety of our employees and customers, the security of our workplace, and the operation of our facilities; or

b. To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

9. To contractors and other Federal agencies, as necessary, to assist us in efficiently administering our programs.

10. To the appropriate Federal, State, and local agencies, entities, and persons when: (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, risk of identity theft or fraud, or harm to the security or integrity of this system or our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

11. To Federal, State, and local professional licensing boards, at our initiative or at the request of the licensing board, when such records indicate a violation of ethical conduct by a current or former employee who is seeking to be licensed or is licensed before the professional board.

12. To a Federal or State agency in response to its request, or at our initiation, in connection with decisions to hire an employee, issue a security clearance, conduct a security or suitability investigation of a person, classify a job, award a contract, or regarding the requesting agency's decision to issue a license, grant, or other benefit. We may disclose for lawful statutory administrative or investigative purpose to the extent that the information is relevant and necessary to the requesting agency's decision.

13. To officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting conditions of employment.

14. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We will store records covered by the *ALJ/PAMC* system of records in electronic and paper form.

RETRIEVABILITY:

We will retrieve information covered by the *ALJ/PAMC* system of records by:

- The name of the ALJ who is the subject of the complaint, the ALJ's assigned numerical identifier, and the hearing or regional office where the ALJ is stationed;
- The claimant's name, SSN, date of birth, address, gender, and race or ethnic background, if the information is available;
- The advocate's or representative's name, if any, and any other identifiable information pertaining to the complaint filed;
- Our assigned tracking numbers, and other complaint and claims-related information;
- The congressional office associated with the complaint, if any; and
- The Appeals Council's code.

SAFEGUARDS:

We will keep paper records in locked cabinets or in other secure areas. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data, and will store computerized records in secure storage areas accessible only to our authorized employees and contractors who require the information to perform their official duties.

We annually provide all our employees and contractors with appropriate security awareness and training that includes reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must annually sign a sanction document, acknowledging their accountability for inappropriately accessing or disclosing such information.

RETENTION AND DISPOSAL:

We will maintain records at all agency ODAR regional offices and the Office of the Chief Administrative Law Judge in Falls Church, Virginia. We will delete or destroy records seven years after the date of the Office of the Chief Administrative Law Judge's finding regarding the complaint, unless a special situation occurs. This seven-year requirement, which can be found in schedule N1–47–01, is consistent with the amount of time that we maintain most disability claim files.

Special Situation—The following examples are situations in which we will maintain information beyond the scheduled period for destruction:

- Fraud, waste, abuse, or misuse—We will not destroy information where we identify possible fraud, waste, abuse, or misuse or information involving investigations of fraud, waste, abuse, or misuse, until the Office of the Inspector General provides approval to dispose of such information.
- Disciplinary action—We will not destroy information related to ALJ disciplinary action until the Office of the Chief Administrative Law Judge provides approval to dispose of such information.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quality Services, Office of the Chief Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, 5107 Leesburg Pike, Suite 1608, Falls Church, Virginia 22041.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information in this system of records that will identify them. Persons requesting notification by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification of records in person must provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record about which they are requesting notification. If we determine that the identifying information the person provides by telephone is insufficient, we will require the person to submit a request in writing or in person. If a person requests information by telephone on behalf of another person, the subject person must be on the telephone with the requesting person and us in the same phone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name) and ask for his or her consent to provide information to the requesting person. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Persons should also reasonably specify the record contents they are seeking. These procedures are in accordance with our regulations at 20 CFR 401.40(c).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Persons should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

We obtain records covered by the *ALJ/PAMC* system from the:

- Complaint filed by the claimant or his or her advocate or representative, if any;
- Information we receive from a congressional office regarding a claimant and a particular ALJ;
- Documentation that we develop during our review or investigation of a complaint; and

• Appeals Council.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–3495 Filed 2–22–10; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice Number: 6372]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy has rescheduled its public meeting to March 15, 2010 from 9 a.m. to 11 a.m. in the conference room of the International Foundation for Electoral Systems (IFES) located at 1850 K Street, NW., Fifth Floor, Washington, DC 20006. This will replace the previously scheduled February 11 meeting (canceled due to inclement weather) at the same location.

The Commissioners will discuss public diplomacy issues, including interagency collaboration in advancing U.S. government public diplomacy efforts.

The Commission is a bipartisan panel created by Congress in 1948 to assess public diplomacy policies and programs of the U.S. government and of publicly funded nongovernmental organizations. The Commission reports its findings and recommendations to the President, the Congress, the Secretary of State, and the American people.

The public may attend this meeting as seating capacity allows. To attend this meeting and for further information, please contact Carl Chan at (202) 632–2823; e-mail: *chanck@state.gov.* Any member of the public requesting reasonable accommodation at this meeting should contact Mr. Chan prior to March 8th. Requests received after that date will be considered, but might not be possible to fulfill.

Dated: February 16, 2010.

Carl Chan,

Executive Director, ACPD.

[FR Doc. 2010–3563 Filed 2–22–10; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 6879]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday March 9th, 2010, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the sixtieth Session of the International Maritime Organization (IMO) Marine Environmental Protection Committee to be held at the IMO headquarters in London, United Kingdom, from March 22 to March 26th, 2010.

The primary matters to be considered include:

—Harmful aquatic organisms in ballast water
—Recycling of ships
—Prevention of air pollution from ships
—Consideration and adoption of amendments to mandatory instruments
—Interpretations of and amendments to MARPOL and related instruments
—Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) and the OPRC-Hazardous and Noxious Substances Protocol and relevant conference resolutions
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas
—Inadequacy of reception facilities
—Reports of sub-committees
—Work of other bodies
—Status of conventions
—Harmful anti-fouling systems for ships
—Promotion of implementation and enforcement of MARPOL and related instruments
—Technical Cooperation Sub-program for the Protection of the Marine Environment
—Role of the human element
—Formal safety assessment
—Noise from commercial shipping and its adverse impacts on marine life
—Work program of the Committee and subsidiary bodies
—Application of the Committees' Guidelines
—Consideration of the report of the Committee

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator, LCDR Brian Moore, by e-mail at *brian.e.moore@uscg.mil,* by phone at (202) 372–1434, by fax at (202) 372–1925, or in writing at Commandant (CG–5224), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than March 2nd, 2010, 7 days prior to the meeting. A member of the public requesting reasonable accommodation should also make such request prior to March 2nd, 2010. Requests made after March 2nd, 2010 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available).

However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: February 12, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–3565 Filed 2–22–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6880]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

Summary: The Advisory Committee on Historical Diplomatic Documentation will meet on March 1 and March 2 at the Department of State, 2201 "C" Street NW., Washington, DC.

Prior notification and a valid government-issued photo ID (such as driver's license, passport, U. S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Margaret Morrissey, Office of the Historian (202–663–3529) no later than February 25, 2010 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/State, passport number/country, or US government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Margaret Morrissey for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made No later than February 23, 2010. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 1:30 p.m. through 2:30 p.m. on Monday, March 1, 2010, in the Department of State, 2201 "C" Street NW., Washington, DC, in Conference

Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 2:45 p.m. until 5 p.m. on Monday, March 1, 2010 and 9 a.m. until 12 p.m. on Tuesday, March 2, 2010, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Questions concerning the meeting should be directed to Ambassador Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, *(e-mail history@state.gov).*

In accordance with 41 CFR 102–3.150(b), the Department finds exceptional circumstances for giving less than 15 calendar days notice. The meeting must be held on March 1–2 due to the availability of the members of the Advisory Committee; however, publication of the notice was delayed because of unforeseen and exceptional weather emergencies that necessitated closing Federal offices or curtailing government activities for a significant period of time in Washington DC, including at the Department of State and the Office of the **Federal Register.**

Dated: February 16, 2010.

Edward Brynn,

Executive Secretary, Department of State.

[FR Doc. 2010–3564 Filed 2–22–10; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS404]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Certain Shrimp From Viet Nam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on February 1, 2010, the Socialist Republic of Vietnam ("Vietnam") requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning a number of antidumping administrative reviews and new shipper reviews conducted by the Department of Commerce on imports of certain frozen warmwater shrimp from Vietnam (Investigation A–552–801), and various U.S. laws, regulations, administrative procedures, practices, and methodologies. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS404/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 15, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2010–0008. If you are unable to submit comments using *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comments contain confidential information, then the comments should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9617.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by Vietnam

On February 1, 2010, Vietnam requested consultations regarding a number of antidumping administrative reviews and new shipper reviews conducted by the Department of Commerce on certain frozen warmwater shrimp from Vietnam, referring in particular to the use of what it describes as "zeroing" in those reviews. Vietnam challenges the determinations by the Department of Commerce in (1) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review,* 72 FR 52,052 (September 12, 2007), as well as any assessment instructions and cash deposit requirements issued pursuant thereto; (2) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Recission of Antidumping Duty Administrative Review,* 73 FR 52,273 (September 9, 2008), as well as any assessment instructions and cash deposit requirements issued pursuant thereto; (3) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the Second New Shipper Review,* 74 FR 24,796 (May 26, 2009), as well as any assessment instructions and cash deposit requirements issued pursuant thereto; (4) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Recission of Antidumping Duty Administrative Review,* 74 FR 47,191 (September 15, 2009), as well as any assessment instructions and cash deposit requirements issued pursuant thereto; (5) preliminary and final results of any administrative reviews or other reviews of *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* published in the **Federal Register** after the date of the request for consultations, including reviews under Section 751(c) of the Tariff Act of 1930, as well as any assessment instructions and cash deposit requirements issued pursuant thereto; (6) any changes in the final results of any administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* issued pursuant to a remand from the U.S. Court of International Trade, as well as any opinion of the Court related to the remand results, and any assessment instructions and cash deposit requirements issued pursuant thereto; and (7) any actions taken by U.S. Customs and Border Protection to collect definitive antidumping duties at duty assessment rates established in the administrative reviews identified above, including through the issuance of liquidation instructions and notices. Vietnam also challenges various U.S. laws, regulations, administrative procedures, practices, and methodologies, including (1) the Tariff Act of 1930, as amended, in particular sections 736, 751, 771(35)(A) and (B), and 777A(c) and (d) (19 U.S.C. 1673e, 1675, 1677(35)(A) and (B), and 1677f(c) and (d)); (2) the Statement of

Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040; (3) Department of Commerce regulations set forth in part 351 of Title 19 of the Code of Federal Regulations, in particular sections 351.212(b) and 351.414(c) and (e); (4) the Import Administration Antidumping Manual (1997 ed.), including the computer programs referenced therein; and (5) the general procedures and methodology employed by the United States to determine dumping margins in administrative reviews, whereby the Department of Commerce, in comparing weighted average normal value with the transaction price of individual export transactions, treats as zero negative intermediate comparison results (*i.e.,* situations in which the individual export price is greater than the weighted average normal value), which methodology Vietnam asserts is commonly referred to as "simple zeroing" and/or the U.S. "zeroing procedures."

Vietnam alleges that these laws, regulations, administrative procedures, practices, and methodologies are, as such and as applied in the determinations by the Department of Commerce and actions by U.S. Customs and Border Protection in the shrimp administrative reviews and new shipper reviews, inconsistent with Articles I, II, VI:1, and VI:2 of the General Agreement on Tariffs and Trade 1994; Articles 1, 2.1, 2.4, 2.4.2, 6.8, 6.10, 9.1, 9.3, 9.4, 11.2, 11.3, 18.1, and 18.4, and Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement); Article XVI:4 of the WTO Agreement; and Vietnam's Protocol of Accession to the WTO.

Vietnam alleges that the United States acted inconsistently with the WTO Agreement obligations identified above by applying so-called "zeroing" in the determination of the margins of dumping in the reviews identified above, by repeatedly and consistently failing to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, and by requiring companies to demonstrate their independence from government control and applying an adverse facts available rate to companies failing to do so in all reviews.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2010–0008. If you are unable to submit comments using *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0008 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" link at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is necessary and sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Business confidential information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–3551 Filed 2–22–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Rugby Aviation LLC D/B/A Northwest Sky Ferry for Commuter Air Carrier Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2010–2–7) Docket OST–2009–0188.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Rugby

Aviation, LLC d/b/a Northwest Sky Ferry fit, willing, and able, and awarding it commuter air carrier authority to conduct scheduled commuter service.

DATES: Persons wishing to file objections should do so no later than February 26, 2010.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2009–0188 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: February 16, 2010.

Susan L. Kurland,

Assistant Secretary For Aviation and International Affairs.

[FR Doc. 2010–3452 Filed 2–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1036]

The City of Chicago, Illinois—Adverse Abandonment—Chicago Terminal Railroad in Chicago, IL

On February 1, 2010, the City of Chicago, IL (the City), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of two railroad lines in the City owned by the Chicago Terminal Railroad (CTR), totaling 1.625 miles: (1) a portion of the Kingsbury Branch from its southern terminus at the intersection of Kingsbury, Division, and Halstead Streets, to, but not including, the point at which the Goose Island Branch diverges from the Kingsbury Branch at or near Willow Street, a distance of approximately 6 city blocks (.75 mile) (the Kingsbury Segment); and (2) a portion of the Lakewood Avenue Line between the southwest right-of-way line of Clybourn Avenue and the Line's northern terminus at Diversey Parkway, a distance of approximately 7 city blocks (.875 mile) (the Lakewood Segment).[1] The lines traverse United States Postal Service Zip Codes 60614 and 60622 and include no stations. The application is available on the Board's Web site at *http://www.stb.dot.gov,* or a copy can be secured from applicant's counsel, whose name and address appear below.

According to the City, these segments are not required for rail service, and their abandonment would benefit the City by improving safety and facilitating the reconstruction of the streets where the track is located.

In a decision served in this proceeding on July 10, 2009, the City was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, the City was granted waiver of certain requirements pertaining to the notice of intent prescribed at 49 CFR 1152.21; waivers of and exemptions from requirements in 49 CFR 1152.20(a)(2)(i) and (a)(3), and 49 U.S.C. 10903(a)(3)(D) and (B) that the notice be served on significant users and posted, except to the extent necessary to require the City to mail a copy of its notice to four shippers located on contiguous lines; waiver of the requirement in 49 CFR 1152.20(a)(2)(xii) that the notice be served on certain labor organizations; waiver of and exemption from the requirements pertaining to the System Diagram Map in 49 CFR 1152.10 to 1152.14, 1152.24(e)(1), 1152.22(a)(5), and 49 U.S.C. 10903(c)(2); waiver of the requirements of 49 CFR 1152.22(b)–(d), which require a description of the physical condition of the line, estimated deferred maintenance and rehabilitation costs, a description of service performed on the line during the prior year, and computation of the revenues and avoidable costs attributable to the line; certain requirements in 49 CFR 1152.22(i) pertaining to the draft **Federal Register** notice; waiver of the 1-year time limit on abandonment authority specified at 49 CFR 1152.29(e)(2); exemption from 49 U.S.C. 10904, which governs offers of financial assistance (OFAs), and waiver of the implementing regulations at 49 CFR 1152.27; and exemption from the provisions of 49 U.S.C. 10905, which provide for the offering of rail properties approved for abandonment for sale for public purposes, and waiver of the implementing regulations at 49 CFR 1152.28.

The City states that there is no documentation in its possession indicating that the lines contain Federally granted rights-of-way and that it will make any such documentation relating to this abandonment available promptly to those requesting it. The City's entire case for adverse abandonment was filed with the application.

The interests of railroad employees, if there are any employees on the lines, will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by March 18, 2010. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements in 49 CFR 1152.25. Because this is an adverse abandonment proceeding, OFAs and public use requests are not appropriate and will not be entertained. The City's reply is due by April 2, 2010.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by March 18, 2010, and should address that issue. Each trail use request must be accompanied by a $250 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1036 and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; (2) counsel for applicant—Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112; and (3) counsel for CTR—John D. Heffner, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person submitting a

[1] This application is subject to a motion to strike and request for a cease and desist order filed by CTR on January 14, 2010, which allege that the City has unlawfully removed part of the track. The issues raised by this filing will be resolved in a subsequent decision.

filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA by phone at the number listed below. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment/discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to SEA at (202) 245–0305. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 17, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–3408 Filed 2–22–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–2]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on December 16, 2009 (74 FR 66722).

DATES: Comments must be submitted on or before March 25, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 16, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 74 FR 66722. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Designation of Qualified Persons.

OMB Control Number: 2130–0511

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect freight cars for compliance and to determine restrictions on the movements of defective cars.

Annual Estimated Burden: 40 hours.

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: The collection of information is due to the passenger train emergency regulations set forth in 49 CFR Parts 223 and 239 which require railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting operations of rail passenger service. The regulations require luminescent or lighted emergency markings so that passengers and emergency responders can readily determine where the closest and most accessible exit routes are located and how the emergency exit mechanisms are operated. Windows and doors intended for emergency access by responders for extrication of passengers must be marked with retro-reflective material so that emergency responders, particularly in conditions of poor visibility, can easily distinguish them from the less accessible doors and windows. Records of the inspection, maintenance, and repair of emergency windows and door exits, as well as records of operational efficiency tests, will be used to ensure compliance with the regulations.

Annual Estimated Burden: 10,910 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; *Attention:* FRA

Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 17, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–3427 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25756]

Commercial Driver's License Standards: Application for Exemption; Volvo Trucks North America (Volvo)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Volvo Trucks North America (Volvo) has applied for an exemption from the Federal requirement for a driver of commercial motor vehicles (CMVs) to hold a commercial driver's license (CDL). Volvo requests that the exemption cover one Swedish field-test engineer who will test-drive CMVs for Volvo within the United States. The Volvo employee holds a valid Swedish CDL. Volvo states the exemption is needed to support a Volvo field test to meet future clean air standards, to test-drive Volvo prototype vehicles to verify results in "real world" environments, and, if necessary, to deliver the vehicles in the United States. Volvo believes the knowledge and skills tests and training program that Swedish drivers undergo to obtain a Swedish CDL ensures the exemption would provide a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirements for a CDL.

DATES: Comments must be received on or before March 25, 2010.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2006–25756 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W–12–140, 1200 New Jersey Avenue, SE., 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *Please see* the "Privacy Act" heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the conducting of any safety analyses. The Agency must also provide an opportunity for public comment on the application.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Volvo has applied for an exemption from the CDL rules, specifically 49 CFR 383.23 that prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Volvo requests the exemption because this driver-employee is a citizen and resident of Sweden, and therefore cannot apply for a CDL in any of the United States. A copy of the application is in Docket No. FMCSA–2006–25756. The exemption would allow one driver to operate CMVs in interstate commerce as part of a team of drivers who will support a Volvo field

test to meet future air quality standards. The driver will test-drive Volvo prototype vehicles at its test site and in the vicinity around Phoenix, Arizona, verify results in "real world" environments, and, if necessary, deliver the vehicles in the U.S. The driver is Edvard Lundgren, and Volvo requests that the exemption cover a 2-year period.

This driver holds a valid Swedish CDL, and as explained by Volvo in previous exemption requests, drivers applying for a Swedish-issued CDL must undergo a training program and pass knowledge and skills tests. Volvo also stated in prior exemption requests that the knowledge and skills tests and training program that Swedish drivers undergo to obtain a Swedish CDL ensure the exemption provides a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL.

FMCSA has previously determined the process for obtaining a Swedish-issued CDL is comparable to, or as effective as, the Federal requirements of Part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. In the past 2 years, FMCSA has published several notices of similar Volvo requests. An FMCSA notice of a similar nature was published on January 5, 2009, granting a comparable exemption to Volvo for a Swedish CDL driver permitting operation of CMVs in the U.S. (74 FR 333).

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Volvo's application for an exemption from the CDL requirements of 49 CFR 383.23. The Agency will consider all comments received by close of business on March 25, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: February 16, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3561 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0294]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-four individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 23, 2010. The exemptions expire on February 23, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://www.regulations.gov.*

Background

On December 22, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-four individuals and requested comments from the public (74 FR 68092). The public comment period closed on January 21, 2010 and one comment was received.

FMCSA has evaluated the eligibility of the twenty-four applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-four applicants have had ITDM over a range of 1 to 42 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage his/her diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 22, 2009, **Federal Register** Notice therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation expressed that it had reviewed the driving records for Joseph I. Kulp, Sr., and was in favor of granting a Federal diabetes exemption to him.

Conclusion

Based upon its evaluation of the twenty-four exemption applications, FMCSA exempts, Daniel W. Boldra, Simon P. Bollin, Patrick J. Bukolt, Leonel L. Cantu, Jr., William J. Cobb, Jr., Wallace E. Conover, Daniel C. Druffel, Gregory J. Godley, Troy A. Gortmaker, Charles M. Griswold, Kenneth M. Ham, Justin R. Henneinke, William R. Huntley, Ricky G. Kile, Joseph I. Kulp, Sr., Paul J. Failla, Eric D. Larson, Kevin R. Mooney, Daniel D. Neale, Richard D. Preisser, Brian A. Schlieckau, Richard L. Sulzberger, Clayton F. Tapscott, Dirk VanStralen and Henry L. Waskow, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3562 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–1999–6156]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 7, 2010. Comments must be received on or before March 25, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5748; FMCSA–1999–6156, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 5 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Dennis J. Lessard, Harry R. Littlejohn, James D. Simon, Robert J. Townsley, and Jeffrey G. Wuensch.

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 67 FR 10475; 69 FR 8260; 71 FR 6824; 73 FR 7360; 64 FR 54948; 65 FR 159). Each of these 5 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 25, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 5 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3573 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2007–27897]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level

of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 5, 2010. Comments must be received on or before March 25, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2007–27897, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 15 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Lee A. Burke, Barton C. Caldara, Allan Darley, Robin S. England, Charles D. Grady, Richard Hailey, Jr., Robert V. Hodges, George R. Knavel, John R. Knott, III, Timothy S. Miller, Roger D. Mollak, Edward D. Pickle, Ezequiel M. Ramirez, James L. Schmitt, James T. Wortham, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (68 FR 61857; 68 FR 75715; 71 FR 644; 73 FR 19928; 68 FR 74699; 69 FR 10503; 71 FR 6829; 70 FR 57353; 70 FR 72689; 73 FR 222; 72 FR 39879; 72 FR 52419). Each of these 15 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 25, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15

individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3567 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 6, 2010 (74 FR 64124).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 27 renewal applications, FMCSA renews the Federal vision exemptions for Grady L. Black, Jr., Anthony Brandano, Stanley E. Elliott, Elmer E. Gockley, Glenn T. Hehner, Wayne H. Holt, Edward E. Hooker, Vladimir M. Kats, Alfred Keehn, Martin D. Keough, Randall B. Laminack, Norman R. Lamy, Robert W. Lantis, James A. Lenhart, Jerry J. Lord, Raymond P. Madron, Ronald S. Mallory, Eldon Miles, Jack E. Potts, Jr., Neal A. Richard, John E. Rogstad, Robert E. Sanders, Steven R. Smith, Robert L. Thies, Rene R. Trachsel, Kendle F. Waggle, Jr. and DeWayne Washington.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if:

(1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3566 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2005–22194]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions

at the end of the 2-year period. The comment period ended on January 11, 2010 (74 FR 65847).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 10 renewal applications, FMCSA renews the Federal vision exemptions for Woodrow E. Bohley, Kenneth E. Bross, Russell W. Foster, Kevin Jacoby, Richard L. Loeffelholz, Herman C. Mash, Frank T. Miller, Robert G. Rascicot, Jon H. Wurtele and Walter M. Yohn, Jr.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if:

(1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3577 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–2003–15268; FMCSA–2005–22194; FMCSA–2007–29019; FMCSA–2007–0017]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 11, 2010 (74 FR 65845).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 27 renewal applications, FMCSA renews the Federal vision exemptions for Thomas E. Anderson, Garry A. Baker, Bruce W. Barrett, Richard D. Becotte, Wayne Burnett, Theodore W. Cozat, Alex G. Dlugolenski, Karen Y. Duvall, Nigel L. Farmer, Gordon R. Fritz, John A. Graham, Jimmy D. Gregory, Donald W. Holt, Larry Lentz, Boleslaw Makowski, Joseph W. Meacham, Charles M. Moore, Gary T. Murray, Anthony D. Ovitt, John R. Parsons, III, Martin Postma, Steven S. Reinsvold, Michael J. Richard, Glenn T. Riley, George E. Todd, Gary S. Warren and Bradley A. Weiser.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3582 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9561; FMCSA–2005–22194]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also

allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on December 21, 2009 (74 FR 60021).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 19 renewal applications, FMCSA renews the Federal vision exemptions for Norman E. Braden, Henry L. Chastain, Thomas R. Crocker, Clinton D. Edwards, Gerald W. Fox, Ronald K. Fultz, Richard L. Gandee, John L. Hynes, Richard H. Kind, Robert S. Larrance, John D. McCormick, Thomas C. Meadows, David A. Morris, Leigh E. Moseman, Richard P. Stanley, Paul D. Stoddard, Robert L. Tankersley, Jr., Scott A. Tetter and Benny R. Toothman.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 5, 2010.

Larry W. Minor

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–3575 Filed 2–22–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 17, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 25, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1551.

Type of Review: Revision of a currently approved collection.

Title: RP 97–36, RP 97–38, RP 97–39, RP 2002–9, and RP 2008–52, RP 2009–XX; Changes in Methods of Accounting.

Description: The information collected in the four revenue procedures is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

Respondents: Businesses or other for-profits, farms.

Estimated total burden hours: 24,937 hours.

OMB Number: 1545–0790.

Type of Review: Extension of a currently approved collection.

Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

Form: 8082.

Description: IRC sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222), and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs. Also, sections 6241 and 6034A(c) extend this requirement to partners in electing large partnerships and beneficiaries of estates and trusts.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 51,024 hours.

OMB Number: 1545–1855.

Type of Review: Extension of a currently approved collection.

Title: REG–141402–02 Limitation on Use of the Nonaccrual-Experience Method of Accounting under Section 448(d)(5).

Description: The regulations provide four safe harbor nonaccrual-experience methods that will be presumed to clearly reflect a taxpayer's nonaccrual experience, and for taxpayers who wish to compute their nonaccrual experience using a computation or formula other than the one of the four safe harbors provided, the requirements that must be met in order to use an alternative computation or formula to compute their nonaccrual experience.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 24,000 hours.

OMB Number: 1545–1558.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1; and Revenue Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.

Description: Revenue Procedure 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under section 1.475(c)–1, subject to specified terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance in a question and answer format.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 1,000 hours.

OMB Number: 1545–1145.

Type of Review: Extension of a currently approved collection.

Title: Generation-Skipping Transfer Tax Return for Terminations.

Form: 706–GS (T).

Description: Form 706–GS (T) is used by trustees to compute and report the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals and households.

Estimated total burden hours: 684 hours.

OMB Number: 1545–0951.

Type of Review: Extension of a currently approved collection.

Title: FORM 5434, Application for Enrollment; and Form 5434–A, Application for Renewal of Enrollment.

Form: 5434, 5434–A.

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

Respondents: Individuals or households.

Estimated total burden hours: 3,800 hours.

OMB Number: 1545–1849.

Type of Review: Extension of a currently approved collection.

Title: Employer/Payer Information.

Form: 13460.

Description: Form 13460 is used to assist filer's who have under-reporter or correction issues. Also, this form expedites research of filer's problems.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 50 hours.

OMB Number: 1545–1143.

Type of Review: Extension of a currently approved collection.

Title: Notification of Distribution from a Generation-Skipping Trust.

Form: 706–GS (D–1).

Description: Form 706–GS (D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households.

Estimated total burden hours: 348,800 hours.

OMB Number: 1545–1858.

Type of Review: Extension of a currently approved collection.

Title: Notice 2003–67, Notice on Information Reporting for Payments in Lieu of Dividends

Description: This notice provides guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003. The notice provides rules for brokers to use in determining loanable shares and rules for allocating transferred shares for purposes of determining payments in lieu of dividend reportable to individuals. These rules require brokers to comply with certain recordkeeping requirements to use the favorable rules for determining loanable shares and for allocating transferred shares that may give rise to payments in lieu of dividends.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 60,000 hours.

OMB Number: 1545–2024.

Type of Review: Extension of a currently approved collection.

Title: Limited Pay-ability Claim against the United States For Proceeds of the Internal Revenue Refund Check.

Form: 13818.

Description: This form is used by taxpayers for completing a claim against the United States for the proceeds of an Internal Revenue refund check.

Respondents: Individuals or households.

Estimated total burden hours: 4,000 hours.

OMB Number: 1545–1694.

Type of Review: Extension of a currently approved collection.

Title: Revenue Ruling 2000–35 Automatic Enrollment in Section 403(b) Plans

Description: Revenue Ruling 2000–35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 403(b) plan in the absence of an affirmative election by the employee.

Respondents: State, Local, and Tribal Governments.

Estimated total burden hours: 175 hours.

OMB Number: 1545–2026.

Type of Review: Extension of a currently approved collection.

Title: Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

Form: 13797.

Description: This form will be provided to tribes who elect to perform a self compliance check on any or all of their entities. This is a voluntary program and the entry is not penalized for non- completion of forms and withdrawal from the program. Upon completion, the information will be used by the Tribe and ITG to develop training needs, compliance strategies, and corrective actions.

Respondents: State, Local, and Tribal Governments.

Estimated total burden hours: 447 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–3431 Filed 2–22–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 17, 2010.

The Department of Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of this submission may be obtained by calling the Treasury Department Office Clearance Officers listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 25, 2010 to be assured of consideration.

Domestic Finance International Portfolio Investment Data System

OMB Number: 1505–0010.

Type of Review: Revision of a currently approved collection.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants.

Form: FC–2.

Description: Collection of information on Form FC–2 is required by law. Form FC–2 is designed to collect timely information on foreign exchange contracts purchased and sold; foreign exchange futures purchased and sold; foreign currency options and net delta equivalent value; foreign currency denominated assets and liabilities; net reported dealing positions.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 950 hours.

OMB Number: 1505–0012.

Type of Review: Revision of a currently approved collection.

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants.

Form: FC–1.

Description: Collection of information on Form FC–1 is required by law. Form FC–1 is designed to collect timely information on foreign exchange spot, forward and futures purchased and sold; net options position, delta equivalent value long or short; net reported dealing position long or short.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 915 hours.

OMB Number: 1505–0014.

Type of Review: Revision of a currently approved collection.

Title: Quarterly Consolidated Foreign Currency Report.

Form: FC–3.

Description: Collection of information on Form FC–3 is required by law. Form FC–3 is designed to collect timely information on foreign exchange contracts purchased and sold; foreign exchange futures purchased and sold; foreign currency denominated assets and liabilities; foreign currency options and net delta equivalent value.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 1,216 hours.

Domestic Finance International Portfolio Investment Data System

Clearance Officer: Dwight Wolkow, 1500 Pennsylvania Ave, NW., Washington, DC 20220; (202) 622–1276.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–3432 Filed 2–22–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the Financial Education and Counseling (FEC) Pilot Program Application.

DATES: Written comments should be received on or before April 26, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Jodie Harris, Associate Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The FEC Pilot Program Application may be obtained from the FEC page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Jodie Harris, Associate Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–6355. This is not a toll free number.

SUPPLEMENTARY INFORMATION: *Title:* Financial Education and Counseling Pilot Program Application.

OMB Number: 1559–0034.

Abstract: The purpose of the FEC Pilot Program is to provide financial assistance awards to eligible organizations to provide a range of financial education and counseling services to prospective homebuyers. The FEC Pilot Program was authorized in July of 2008 under Section 1132 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289). In March, 2009, $2 million was appropriated for this program under the Omnibus Appropriations Act of 2009 (Pub. L. 111–8), and in December, 2009, $4.15 million was appropriated for this program under the Consolidated Appropriations Act of 2010 (Pub. L. 111–117).

Current Actions: New collection.

Type of Review: Regular Review.

Affected Public: Certified CDFIs, counseling agencies certified by the U.S. Department of Housing and Urban Development, credit unions, State, local, and tribal governments.

Estimated Number of Respondents: 75.

Estimated Annual Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 3,000 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov. Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Pub. L. 110–289.

Dated: February 18, 2010.

Scott Berman,

Acting Chief Operating Officer, Community Development Financial Institutions Fund.

[FR Doc. 2010–3550 Filed 2–22–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel. The current charter of the Art Advisory panel will be renewed for a period of two years.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bothwell, C:AP:P&V:ART, 1099 14th Street, NW., Room 4200E Washington, DC 20005, Telephone No. (202) 435–5611 (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (2000), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Douglas H. Shulman,

Commissioner of Internal Revenue.

[FR Doc. 2010–3429 Filed 2–22–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
February 23, 2010

Part II

Department of Justice

Drug Enforcement Administration

Jeri Hassman, M.D.; Denial of Application; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–62]

Jeri Hassman, M.D.; Denial of Application

On June 1, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration issued an Order to Show Cause to Jeri Hassman, M.D. (Respondent), of Tucson, Arizona. The Show Cause Order proposed the denial of Respondent's application for a new DEA Certificate of Registration as a practitioner, authorizing her to dispense controlled substances in schedules II through V, on the grounds that the Respondent had "been convicted of a felony under the Controlled Substances Act, [had] materially falsified [her] application, and ha[d] committed such other acts as would render [her] registration under 21 U.S.C. 823 inconsistent with the public interest." ALJ Ex. 1, at 1 (citing 21 U.S.C. 824(a)(1)(2) and (4), 824(a) and 823).

More specifically, the Show Cause Order alleged that on November 1, 2002, DEA had immediately suspended Respondent's DEA registration on the ground that she "regularly engaged in the practice of prescribing excessive amounts of controlled substances * * * to patients for no legitimate medical purpose." *Id.* at 1–2. The Show Cause Order next alleged that patients to whom she had prescribed controlled substances had died of overdoses. *Id.* at 2–3.

Next, the Show Cause Order alleged that Respondent "prescribed excessive quantities of controlled substances to patients, including frequent early refills" to a number of other patients. *Id.* at 3. The Show Cause Order alleged that Respondent:

> generally failed to adequately evaluate patients, failed to conduct complete physical examinations, failed to obtain adequate histories, failed to include pain ratings, failed to determine the exact location or character of the pain, failed to obtain information concerning previous treatment from other physicians or medication used.

Id. In addition, the Show Cause Order stated that "[d]espite these inadequate evaluations, [Respondent] immediately prescribed controlled substances to these patients." *Id.*

The Order to Show Cause also alleged that Respondent was "made aware of possible diversion incidents but continued to prescribe controlled substances for patients who were engaged in diversion." *Id.* at 4. The Show Cause Order related five known incidents involving (1) F.L. and his son B.L., both patients of Respondent; (2) & (3) J.O. and her husband W.O., both patients of Respondent; (4) M.H., P.H., and A.B., a mother and two "daughters", all patients of Respondent; and (5) S.R., a patient of Respondent. *Id.* at 4–6.

The Show Cause Order further alleged that on January 29, 2004, Respondent pled guilty to "four felony violations of 18 U.S.C. 3 involving controlled substances: Accessory After the Fact to Possession of Controlled Substances by Misrepresentation, Fraud, Forgery, Deception or Subterfuge, 21 U.S.C. 843(a)(3)." *Id.* at 6.

Next, the Show Cause Order alleged that on March 10, 2004, Respondent "entered into a Consent Agreement with the Arizona Medical Board (the Board), in which the Board found that [Respondent] failed in many ways to properly care for [her] patients, including the prescribing of excessive amounts of controlled substances." *Id.* According to the Show Cause Order:

> The Board also found that [Respondent] failed to conduct physical examinations, failed to obtain adequate patient histories and failed to obtain prior medical records. The Board also found that [her] patient notes often did not provide sufficient information to support the diagnoses, justify the treatments, accurately document the results, or indicate advice and cautionary warnings provided to the patients.
>
> * * * Under the Consent Agreement the Board found [Respondent] guilty of unprofessional conduct and placed [Respondent's] Arizona medical license on probation for two years from the effective date of the Consent Agreement.

Id.

Finally, the Show Cause Order alleged that Respondent materially falsified her application, when, on January 28, 2005, Respondent applied for her DEA registration, she marked "no" to question 4(d), which "asked, in pertinent part, whether [Respondent] had ever had a State professional license revoked, suspended or placed upon probation." *Id.*

Respondent timely requested a hearing on the allegations, ALJ Ex. 2, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). Following pre-hearing procedures, a hearing was held on January 22–26, 2007 and February 27 to March 2, 2007, in Tucson, Arizona. Moreover, on March 13, 2007, the ALJ conducted a transcribed telephone conference at which Respondent gave her closing argument. Thereafter, both parties filed post-hearing briefs.

On October 9, 2008 the ALJ issued her Opinion and Recommended Decision (ALJ). With respect to factor one (the recommendation of the State licensing board), the ALJ noted that, while Respondent has twice been placed on probation and either censured or reprimanded, she currently holds an active, unrestricted medical license, and that this factor weighs in favor of her continued registration. ALJ at 147–48.

With respect to factor two (Respondent's experience in dispensing controlled substances) and factor four (Respondent's compliance with applicable laws relating to controlled substances), the ALJ concluded that the Government had established that Respondent issued prescriptions to two persons (H.T. and R.T.) which lacked a legitimate medical purpose. ALJ at 150. The ALJ reasoned, however, that these were "only two patients out of more than 900 whom Respondent was treating at that time," and thus the Government had not shown that "Respondent's overall medical practices [were] consistently lacking in legitimate purpose." *Id.* at 150.

The ALJ specifically rejected the evidence of the Government's Expert with respect to twenty-three other patients, noting that various physicians who testified on behalf of Respondent had disagreed with the conclusions of the Government's Expert. *Id.* at 151. According to the ALJ, this was "not to minimize the seriousness of the Respondent's cavalier attitude toward handling controlled substances during 2001 and 2002, but rather to demonstrate that it is not clear that her general treatment practices were lacking in medical purpose." *Id.*

In support of her conclusion, the ALJ cited various areas in which she maintained "that there was no clear consensus in the medical community regarding which practices were required to meet the standard of care during 2001 and 2002." *Id.* According to the ALJ, these areas included the role of physical examinations in treating chronic pain patients, the use of laboratory tests, the need to refer patients to other doctors as part of the course of treatment, appropriate dosage levels of controlled substances for treating chronic pain, and the propriety of prescribing both long and short-acting opioids simultaneously. *Id.*

The ALJ also rejected the Government's contention that Respondent's falsification of H.T.'s medical record (who performed multiple undercover visits and wore a recording device) justified the denial of her application. *Id.* at 153–55. While acknowledging that "[i]t is indeed disturbing that the Respondent apparently altered H.T.'s medical chart to include a physical examination that

was not reflected in the recorded interaction between the Respondent and H.T.,'' *id.* at 153, the ALJ concluded ''that a single instance does not rise to the level of [a] pervasive pattern of falsification.'' *Id.* at 155. In this regard, the ALJ also noted that Respondent was working with another physician to improve her recordkeeping practices.[1] *Id.* at 155–56. The ALJ did not, however, expressly find whether the evidence under factors two and four satisfied the Government's *prima facie* burden.

The ALJ further found that Respondent had been convicted of four counts of the felony offense of ''Accessory After the Fact to Possession of Controlled Substances by Misrepresentation, Fraud, Forgery Deception or Subterfuge,'' and that the convictions could be considered as either an offense ''under Federal * * * laws relating to the * * * dispensing of controlled substances,'' 21 U.S.C. 823(f)(4), or as ''[s]uch other conduct which may threaten the public health and safety.'' *Id.* § 823(f)(5); *see also id.* at 158. While the ALJ found that Respondent's convictions ''could * * * weigh in favor of denial of the * * * application,'' *id.* at 158, she also did not address whether this factor established the Government's *prima facie* case.

The ALJ further found that Respondent had ''engaged in extensive remedial training,'' that she has ''improved skills now available to her, including the use of risk assessment tools and [the] collection of extensive addiction histories on each patient,'' and that she would continue to consult with another pain management expert. *Id.* at 161–62. The ALJ also found it significant that the State Board would conduct regular reviews of her medical charts and quarterly compliance reports. *Id.* at 162. Finally, the ALJ found that ''Respondent's willingness to admit her past mistakes, accept responsibility for her actions, and remedy her professional deficiencies should weigh heavily in favor of granting her application.'' *Id.* at 162. The ALJ thus recommended that I grant Respondent a new registration subject to the conditions that she continue her mentoring arrangement with a pain management specialist for a period of three years and also submit the quarterly reports required by the State Board to the Agency. *Id.* at 163.

On November 3, 2008, the Government filed its exceptions to the ALJ's decision; and on November 28, 2008, Respondent submitted her response to the Government's exceptions. On December 22, 2008, the ALJ forwarded the record to me for final agency action.

Having considered the entire record in this matter, including the ALJ's decision and the parties' briefs, I adopt the ALJ's conclusion of law with respect to the allegations of material falsification. I also agree with the ALJ that Respondent's prescriptions for H.T. lacked a legitimate medical purpose. I reject, however, the ALJ's conclusions with respect to factors two and four.

The ALJ's failure to acknowledge that the Government established a *prima facie* case for denying the application was largely based on her conclusion that the Government had only proved that Respondent issued unlawful prescriptions to two patients and that it had not shown that her ''other medical practices [were] consistently lacking in legitimate purpose.'' The ALJ's reasoning is erroneous for several reasons.

First, it is inconsistent with Agency precedent, which holds that proof of as few as two acts of diversion satisfies the Government's *prima facie* burden under the public interest standard and supports the revocation of a practitioner's registration when she fails to accept responsibility for her misconduct. *See Alan H. Olefsky*, 57 FR 928, 928–29 (1992); *see also Sokoloff* v. *Saxbe*, 501 F.2d 571, 576 (2d Cir. 1974). The record here, however, supports the conclusion that Respondent knowingly issued multiple prescriptions to H.T. which lacked a legitimate medical purpose and violated Federal law. Moreover, while the ALJ stated that she had made extensive findings to place Respondent's treatment of various patients in context, ALJ at 151 n.34, she nonetheless frequently ignored relevant evidence establishing numerous other instances in which Respondent issued prescriptions which clearly violated the prescription requirement of Federal law. 21 CFR 1306.04(a).

Second, the ALJ's reasoning ignores longstanding precedent that the Agency's authority to revoke a registration or deny an application is not limited to those instances in which a practitioner intentionally diverts. Rather, a practitioner who ignores the warning signs that her patients are either personally abusing or diverting to others, commits acts inconsistent with the public interest even if her conduct is merely reckless or negligent. *See Paul J. Caragine, Jr.,* 63 FR 51592 (1998). My review of the patient records establishes numerous instances in which Respondent ignored obvious warning signs that her patients were either personally abusing or diverting. Relatedly, the ALJ did not make detailed findings regarding the frequency of Respondent's issuance of new prescriptions even though this was one of the significant issues in this matter. Moreover, I reject the ALJ's conclusion that Respondent only falsified H.T.'s patient record once and conclude that substantial evidence supports the finding that on six different occasions she falsified his patient record to indicate that she had performed a physical exam when she had not.

While I acknowledge that Respondent has undertaken some measures to improve her practice, I am compelled to reject the ALJ's findings that she has willingly ''admit[ted] her past mistakes,'' and ''accepted responsibility for her actions.'' ALJ at 162. As explained more fully below, with respect to the prescriptions she issued to H.T., Respondent continues to deny that she did anything wrong. Moreover, in her testimony, Respondent maintained that there is nothing wrong with persons using a controlled substance that has not been prescribed to them but to family members and that she did not know what the term ''early refill'' meant even though this was one of the central issues in this case. Accordingly, I conclude that Respondent has not rebutted the Government's *prima facie* showing that granting her a registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). Respondent's application will therefore be denied. As ultimate factfinder, I make the following findings.

[1] The ALJ also noted that a 2002 DEA Audit of controlled substances which Respondent physically dispensed had found that Respondent was unable to account for 150 dosage units out of a total of 7,560 dosage units which were on hand. *Id.* at 153. DEA Investigators also found that Respondent had failed to keep receiving records for samples of controlled substances which her office received, that the records did not contain all of the information required by regulations, and that some records may have been missing because Respondent was not aware that she was required to keep them for two years. *Id.* I agree with the ALJ that these deficiencies are not sufficient by themselves to justify denying her application.

Finally, the ALJ rejected the Government's contention that Respondent had materially falsified her application because she answered ''no'' to the question whether her State license had ever been sanctioned. *Id.* at 160. The ALJ found that Respondent had attached to her application a letter from the Arizona Medical Board which indicated that she would ''continue to be monitored every six months until the end of *her* probation in March 2007.'' *Id.* (quoting GX 3, at 4). According to Respondent, based on the wording of the letter she believed that she—and not her medical license—had been placed on probation by the Board. *Id.* In light of Respondent's having provided the letter with her application, as well as her having truthfully answered the other questions on the application, I agree with the ALJ that she ''lacked the intent to deceive the'' Agency. *Id.* at 161.

Findings [2]

Respondent graduated from New York University Medical School in 1981. Tr. 1346. She has been board-certified in physical medicine and rehabilitation since 1988, and she has practiced medicine in the State of Arizona since 1986. *Id.* Respondent practices as a physiatrist, a physician who specializes in physical medicine and rehabilitation. *Id.*

Respondent formerly held DEA registration BH1192359. ALJ Ex. 1, at 1. In August 2001, the Arizona Medical Board initiated an investigation of Respondent in response to two complaints from health care plans and one complaint from a pharmacy concerning Respondent's prescribing of controlled substances. GX 73, at 4. In July 2001, in response to complaints received from Tucson area pharmacists about Respondent's prescribing of controlled substances, DEA also initiated an investigation. GX 70, at 3. On May 16, 2002, DEA, along with law enforcement officers from other agencies, executed a search warrant at Respondent's registered location, Calmwood Medical in Tucson, Arizona. *Id.* at 20–21. On November 1, 2002, my predecessor immediately suspended Respondent's DEA registration. ALJ Ex. 1, at 1.

On March 26, 2003, a Federal grand jury indicted Respondent, charging her with numerous violations of Federal law. *See* GX 5. Thereafter, Respondent and the Government agreed to a plea bargain; and on January 29, 2004, Respondent pled guilty to four counts of Accessory After the Fact to Possession of Controlled Substances by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge. GX 6, at 1.

The Consent Agreement With the Arizona Medical Board

On March 10, 2004, following the entry of the plea agreement on January 29, 2004, Respondent entered into a Consent Agreement For Decree of Censure And Probation with the Arizona Medical Board ("the Board"). *See* GX 73. In the consent agreement, the Board noted that its staff had reviewed twenty-three patient charts and that the Board's outside consultants had reviewed these charts and were critical of Respondent's practices in prescribing opioids. *Id.* at 4. The Board specifically found that: (1) Respondent "often failed to obtain adequate medical histories or perform adequate physical examinations" before prescribing controlled substances to the patients, (2) that much of her "medical histories came from information provided by the patients themselves," (3) that in some cases she "failed to further substantiate actual diagnoses and physical findings with prior medical records," and (4) that sometimes she "failed to obtain histories of previous drug abuse or monitor for signs of current drug abuse." *Id.* at 4.

The Board also found that in prescribing controlled substance medications, "Respondent [often] failed to maintain adequate records on the patients." *Id.* More specifically, the Board found that Respondent's "written notes often did not provide sufficient information to support the diagnoses, justify the treatments, accurately document the results and indicate advice and cautionary warnings provided to the patients." *Id.* The Board also found that Respondent "may have inappropriately prescribed higher than indicated doses of long- and short-acting opioid medication." *Id.* The Board further concluded that Respondent had engaged in "unprofessional conduct" under Arizona law for various reasons including, *inter alia,* that she had failed or refused to maintain adequate medical records and had engaged in conduct or practices "that is or might be harmful or dangerous to the health of the patient or the public." *Id.* at 6. Respondent was censured and placed on probation for two years with her office management and record-keeping practices under monitoring. *Id.* The Consent Agreement also provided for another two years of probation at the time that "her DEA Certificate is restored." *Id.* at 7. Respondent completed her initial probation on March 10, 2006. RX 30.

Respondent submitted a letter from the Arizona Medical Board, dated December 23, 2004, indicating that she was in compliance with the terms of the order and that Respondent "has the Board's support to pursue her DEA reinstatement." RX 53. The letter, however, also stated that "at no time [had Respondent] attempted to divert medications for non-medical purposes." *Id.*[3] She also submitted a letter from the Board dated January 8, 2007, which indicated that her probation terminated on March 10, 2006, but that new two-year probation would commence "when her DEA certificate is restored." RX 30. The letter indicated that Respondent's "license is currently active without restriction and she is off probation." *Id.*

The Consent Agreement also had required Respondent to complete ten hours of Continuing Medical Education (CME) in "the principles and practices of pain management or addiction medicine" before applying for a new DEA registration. GX 73, at 7. Respondent completed twelve hours of the required CME by April 2004. RX 53. "Since January 2004, she has also acquired 51.25 hours in a wide range of topics relating to pain management." *Id.*[4]

Respondent applied for her DEA Certificate of Registration on January 28, 2005. ALJ Ex. 1, at 6.

Respondent's Prescribing Practices

The Expert Testimony

Both parties put on extensive testimony relevant to the issue of whether Respondent's prescriptions were issued in the usual course of professional practice and were for a legitimate medical purpose.[5] The Government's expert was Dr. Bradford D. Hare [6]; Respondent's experts were Dr.

[2] In this document I take official notice of several material facts because the record is unclear. Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen days of service of this order which shall commence with the mailing of the order.

[3] As explained below, the record in this matter establishes instances in which Respondent did divert for non-medical purposes.

[4] In June 2006, the Arizona Medical Board also reprimanded Respondent and placed her on probation for two years for performing "excessive joint and soft tissue injections without adequate indications and for inadequate documentation of the quantities of pharmaceuticals injected." GX 7, at 12.

[5] While much of the testimony of both parties' experts was couched as to what practices were required to meet the standard of care, numerous courts have recognized that such testimony is relevant in determining whether a physician acted in the usual course of professional practice and for a legitimate medical purpose in prescribing a controlled substance. *See United States* v. *Feingold,* 454 F.3d 1001, 1012 n.3 (9th Cir. 2006) (in criminal case, jury can appropriately "consider the practitioner's behavior against the benchmark of acceptable and accepted medical practice"); *see also United States* v. *Alerre,* 430 F.3d 681, 691 (4th Cir. 2005) (in criminal case, "evidence that a physician's performance has consistently departed from accepted professional standards supports the proposition that the physician was not practicing medicine, but was instead cloaking drug deals under the guise of a professional medical practice").

[6] Dr. Hare is an associate professor of anesthesiology and pharmacology at the University of Utah School of Medicine, where he is also the director of the pain management fellowship and the vice president of the Department of Pain Management Services. Tr. 144–45; GX 47. He is fellowship-trained and board-certified in pain management. Tr. 145. He has an M.D., special certifications from the Board of Anesthesiology and

Jennifer Schneider,[7] who testified as an expert in pain management, and Marylee O'Connor, a Doctor of Pharmacy, who testified as both a fact witness and expert witness on pharmacy although she was not formally qualified as such. *See* Tr. 1137.[8]

In her decision, the ALJ concluded "that there was no clear consensus in the medical community regarding what practices were required to meet the standard of care during 2001 and 2002." ALJ at 151. The ALJ's finding paints with too broad a brush. While it is true that there were some issues on which the parties' experts disagreed (*e.g.,* the scope of an appropriate physical examination, the need to order diagnostic testing, appropriate dosing levels), there was substantial agreement as to what practices are necessary to meet the standard of care.[9]

Initial Visit

Dr. Hare testified that at the initial visit, he asks the patient to characterize the pain and rate it on a scale of 1 to 10. Tr. 155. Dr. Hare also obtains the patient's medical history and "drug history"; as part of the latter, Dr. Hare gathers information on the patient's history of substance abuse including the use of both prescription and illicit drugs. *Id.* at 158. As Dr. Hare testified, he would "be more cautious" in handling a patient with a "significant drug abuse history." *Id.* at 158. Dr. Hare also explained that he tries to get records from other physicians who have treated the patient, as well as the results of diagnostic studies. *Id.* at 156–57.

Dr. Hare then performs a physical examination focusing on the area of the body where the pain is occurring, but which also involves a more general examination. Tr. 152–53. The examination includes "a neurologic examination, an examination for strength, an examination for reflexes, an examination for tenderness, changes in sensitivity of the skin, tenderness in muscles, a whole range of different things, again depending on the nature of what the pain complaint is." *Id.* at 153. Moreover, his examination would include "the vital signs, in other words[,] blood pressure, respiratory rate, heart rate, comments about just general appearance of the patient." *Id.* Also, as part of his physical examination, Dr. Hare checks a patient's heart, chest and abdomen.[10] *Id.* at 154.

Dr. Schneider (Respondent's expert) testified that in her practice, she will not treat a patient absent "old records." Tr. 854. Dr. Schneider explained that the day before the initial visit, her office calls "to remind" patients that if they do not bring records with them, their physician will be called at the visit and asked to fax the records. Tr. 854–55. However, she noted that Respondent, as a physiatrist, would often have the first visit after an injury so that there would not be prior records of treatment of a particular injury and so "it's less essential to start out on day one with old records." Tr. 855.

Dr. Schneider likewise testified as to the importance of obtaining a patient's substance abuse history. According to Dr. Schneider, a patient who has a history of substance abuse can still be prescribed opioids for chronic pain, but the history is a "relative contraindication" for such treatment. Tr. 881. A physician thus needs to "get a careful history and * * * have much more stringent monitoring," but, depending on "the nature of the previous substance abuse, on how long it's been since the person last abused the substance and what kind of treatment they had for it," a physician could still safely prescribe controlled substances. Tr. 881–82.

Dr. Schneider testified that her initial appointment usually takes 45 minutes. Tr. 863–64. In that time, she goes through "the four As." Tr. 864. The first "A" is *analgesia,* and Dr. Schneider asks for a pain rating on a scale of 1–10. *Id.* The second "A" is *activities of daily living,* about how the patient is functioning, as "treating chronic pain is a lot about function, at least as much as about pain relief." *Id.* The third "A" is *adverse effects,* such as side effects. *Id.* The fourth and final "A" is *aberrant drug related behaviors,* which is "anything that's out of the ordinary, like if they say I need an early refill." Tr. 865.

Dr. Schneider also testified that it is medically appropriate for a physician to prescribe based on a "focused physical exam." Tr. 870. According to Dr. Schneider, when a physician sees "somebody for a particular problem, and this is not just in pain, but this is in any field, you limit your exam to that part." *Id.* The exam is "called a focused physical exam because it is limited to the part of the body that the person is having trouble with." *Id.*[11] While the parties thus disagree as to the proper scope of a physical exam, I assume without deciding that a focused physical exam is adequate to diagnose a patient.[12]

Pain Management, and a Ph.D. in pharmacology. *Id.; see* also GX 47. He has performed research in pain management and is currently engaged in the practice of pain management. Tr. 147–48; *see also* GX 47.

[7] Dr. Schneider is board-certified in internal medicine, is certified by the American Society of Addiction Medicine, and is a diplomate of the American Academy of Pain Management. Tr. 807; *see also* RX K–1, at 1; RX 43, at 1. Respondent hired Dr. Schneider several months after the DEA executed its search warrant to mentor Respondent in record-keeping and in pain management. Tr. 808.

[8] Respondent also introduced a written report from Dr. Sharon Weinstein, an Associate Professor of Anesthesiology, Neurology and Oncology at the University of Utah and the Director of Pain Medicine and Palliative Care at the University of Utah's Huntsman Cancer Institute. RX 32, at 1. Dr. Weinstein did not, however, testify at the hearing.

In her report, Dr. Weinstein criticized "Dr. Hare's judgment of [Respondent's] pain management practices [as] appear[ing] to be based at least in part upon * * * assumptions that are erroneous as stated," and than listed what she attributed as being his assumptions. *Id.* at 2. It is unclear, however, the extent to which Dr. Weinstein has accurately characterized Dr. Hare's assumptions, and in any event, many of her criticisms rely on snippets taken from his opinions and ignore extensive other evidence in the patient files that he relied upon.

Dr. Weinstein also opined "that the prescriptions by [Respondent] were written in the usual course of professional practice and for legitimate medical purposes." *Id.* at 1. Because Dr. Weinstein did not testify and was thus not subject to cross-examination, her opinion lacks probative force.

[9] Respondent disputed the validity of Dr. Hare, who practiced in Utah, opining on the standard of care applicable to an Arizona practitioner. Tr. 1420–21. Even if the standard of care varies from one State to another (rather than simply between competing schools of thought within a medical practice specialty), Dr. Hare and Dr. Schneider (who practices in Arizona) had significant areas of agreement.

Respondent also disputed whether her prescribing practices should be evaluated under the standard of care applicable to a pain management specialist rather than the standard applicable to a physiatrist. Resp. Br. at 195. In her brief, Respondent apparently contends that the standard of care applicable to a physiatrist did not require her to obtain other provider's medical records or to obtain addiction histories on her patients prior to prescribing controlled substances. *See id.* The short answer to this contention is that the Arizona Medical Board specifically found that "Respondent failed to further substantiate actual diagnoses and physical findings with prior medical records," and "failed to obtain adequate histories of previous drug abuse." GX 73, at 4. The Board further cited these findings as evidence that Respondent had engaged in unprofessional conduct under Arizona law. *Id.* at 6. Respondent's contention is therefore meritless.

[10] Dr. Hare proceeded to distinguish different types of pain and the treatments appropriate to them. For instance, myofascial pain, characterized by "tender spots in the muscles" and which is usually the result of "an injury of some sort," does not respond well to opioid medication although opioid medication may take the "edge off a bit." *Id.* at 159. Dr. Hare also discussed neuropathic pain, "pain that's due to nerve injury," and stated that it "is a type of pain again that is first treated not with opioids but * * * with drugs like tricyclic antidepressants or the anticonvulsive agents." *Id.* at 160.

[11] Dr Schneider also testified that there is no lethal blood opioid level for non-opioid-naïve patients, and that insurance companies are often the reason why prescriptions may be written for high volume with low dosing. Tr. 904, 909–11.

[12] As one of the grounds for her finding that "there was no clear consensus" regarding what was required to meet the standard of care, the ALJ noted that "Dr. Hare concluded that the Respondent's failure to always perform physical examinations or order tests to verify symptoms constituted

Continued

At the first visit, the physician should create a treatment plan. *Id.* at 170. According to Dr. Hare, he "[t]ypically" does not prescribe opioids on the first visit because he lacks other physicians' records, test results, and the opportunity to consult with other members in his practice group. *Id.* at 164. However, it appears this may be also because Dr. Hare and the other physicians in his practice "oftentimes see the patient as a group," and after evaluating the patient, discuss among themselves whether they "have something to offer that patient." *Id.* Accordingly, to the extent Dr. Hare's testimony suggests that is outside of the course of professional practice to prescribe a controlled substance at a patient's first visit, it is not conclusive.

It was undisputed, however, that "the appropriateness of prescribing [controlled substance] medications * * * depends on the level of medical documentation." *Id.* at 228. According to Dr. Hare, "[w]ithout the appropriate documentation it's inappropriate to prescribe the controlled substances." *Id.* at 229.

Titration of Dosing and Follow-up Visits

Both Dr. Hare and Dr. Schneider testified that when any medication has been prescribed, there will be follow-up visits at which the physician questions the patient about whether there has been improvement in his pain level and functionality, whether there have been side effects, and the continuing benefits of taking the medication. *Id.* at 172 & 181 (testimony of Dr. Hare); *id.* at 864 & 949 (Dr. Schneider's testimony that she reviews the four "A"s with her patients at every visit). At follow-up visits, the physician should question the patient as to whether he is using the medication appropriately.[13] *Id.* The physician should document the patient's response to medication, functionality, and adverse effects in the patient chart. *Id.* at 173; *id.* at 865 & 951.

Moreover, both parties' expert were in agreement that when a patient is currently not on opioids they should be started at a low dose and titrated up slowly to achieve pain relief while minimizing the side effects such as nausea and sedation. Tr. 971–72; *see also id.* at 177 (testimony of Dr. Hare that "you don't want to increase too quickly for fear of overshooting and getting the patient in trouble" by causing "dangerous side effects").

Dr. Hare noted that in the event that the medication is increased, the usual increase is in the amount of 50 percent of the prior dosage. *Id.* at 176. However, according Dr. O'Connor, it is acceptable to titrate at a rate of "no more than 50% to 100% every 5 or more days" so long as the increase in the dose does not cause adverse effects. RX 8, at 2. Moreover, because people respond differently to opioids, there can be great variability as to the dose necessary to alleviate a patient's pain. Tr. 972. In treating unrelieved pain, "there is no dose which is too high unless the patient has toxicity or side effects." RX 9, at 2.[14]

Managing Patients Who Are Receiving Controlled Substances

Both Drs. Hare and Schneider testified as to the importance of setting boundaries with patients who are receiving controlled substances through the use of written agreements. Tr. 161. As Dr. Schneider testified: "I have all my patients sign an agreement [which] lays down the rules and it says that they're [the patients] not to make any changes in their medications without first consulting me."[15] *Id.* at 876. Dr. Schneider further explained that if she gives a patient permission to increase his dose, she documents it. *Id.* at 877.[16] If a patient comes in reporting that he took more medication than prescribed, Dr. Schneider asks why and if the response is not reasonable, her "reaction is * * * to build more structure around them." *Id.* Sometimes this involves having a family member administer the medication, *id.* at 878; it may also involve writing very small prescriptions and having more frequent visits. *Id.* at 879. Similarly, Dr. Hare noted that "if a patient has overused medication," a physician needs to find out why, and if the patient does not offer a "good reason, the physician should counsel the patient to use his medication as prescribed and "hold them to it."[17] *Id.* at 163.

inadequate treatment of the patient for whom she prescribed controlled substances. Yet, Dr. Weinstein found that Dr. Hare's conclusion rested on the erroneous assumption that all painful conditions would be objectively verifiable by a physical exam or test results." ALJ at 52.

It is unclear, however, whether the ALJ was referring to Dr. Hare's testimony regarding the need for the initial exam or for follow-up exams when patients report new symptoms. If the ALJ's comment was referring to whether a patient should be physically examined at the initial visit, even Dr. Schneider indicated that the exam is part of the standard of medical practice. To the extent the ALJ was referring to the need for a physician to perform a physical exam on a subsequent visit when a patient reports new symptoms, obviously the necessity of performing a further physical exam depends upon the patient's symptoms and complaint. Accordingly, whether an exam was required to meet the accepted standard of medical practice cannot be evaluated outside of the context of a specific patient.

[13] Dr. Hare also testified that he asks his patients about their mood and sleep as chronic pain patients "almost uniformly * * * have problems with anxiety and depression." Tr. 172. He indicated that the failure to monitor sleep and mood could cause a physician to "miss the boat" in medicating with opioids. *Id.* at 182.

[14] According to Dr. Hare, if a patient states that the medications are not working well, "then we'd have to decide whether we've just undershot the prescribing or we're dealing with a pain problem that isn't going to respond to pain medicine." *Id.* at 174. In the latter case, he would "make plans to back off on these opioids and look at other ways to manage the pain." *Id.* While this testimony suggests the existence of a dispute over the maximum dosage levels, it is not necessary to resolve this dispute.

[15] Dr. Schneider further explained that there is a "loss of control thing that is part of addiction [and] an addict who wants more medication is not going to be willing to call me in the office and leave a message and have me call him back four hours later to tell him that yes, you can take another pill because you're having more pain." *Id.* at 876.

[16] Subsequently, Dr. Schneider testified that "three" to "five years" ago, a lot of people were not aware of pain agreements and were not using them. Tr. 1012–13. Dr. Hare, however, testified that the agreements had been in use for as "as long as" he could remember and in excess of fifteen years. *Id.* at 187–88. I further note that the record contains a pain management agreement signed by a patient of Respondent in July 2001. *See* RX 72, at 3–4. Whether or not the usual course of professional practice requires that the physician enter into a written agreement setting forth her expectations and what rules her patient must follow while being treated, it is undisputed that a physician must carefully monitor her patients' use of controlled substances.

[17] The record contains a copy of a pain management agreement Respondent used in treating R.T. GX 72, at 3–4. The agreement reads in relevant part:

I understand that if I break this Agreement, my doctor will stop prescribing these pain-control medicines.

In this case, my doctor will taper off the medicine over a period of several days, as necessary, to avoid withdrawal symptoms. Also, a drug-dependence treatment program may be recommended.

I will communicate fully with my doctor about the character and intensity of my pain, the effect of pain on my daily life, and how well the medicine is helping to relieve the pain.

I will not use any illegal controlled substances, including marijuana, cocaine, etc.

I will not share, sell or trade my medication with anyone.

I will not attempt to obtain any controlled substances, including opioid pain medicines, controlled stimulants, or antianxiety medications from any other doctor.

I will safeguard my pain medicine from loss or theft. Lost or stolen medicines will only be replaced at the doctor's discretion.

* * *

I agree to use _____ Pharmacy, located at _____, Telephone number _____, for filling prescriptions for all my pain medicine.

* * *

I agree that I will submit to a blood or urine test if requested by my doctor to determine my compliance with my program of pain control medicine.

I agree that I will use my medicine at a rate no greater than the prescribed rate and that use of my medicine at a greater rate will result in my being without medication for a period of time.

I will bring all unused medicine to every office visit.

GX 72, at 3a–3b.

Both Drs. Hare and Schneider testified that they require their patients to agree to obtain their medications only from themselves and not from other physicians.[18] *Id.* at 161; *id.* at 963. Dr. Schneider testified that if she found out that a patient was obtaining drugs from another source, she would question the patient and determine the circumstances. *Id.* at 962. Moreover, if the patient was obtaining the drugs from another physician, she would call the physician and remind him that "the patient has a contract with" her, which the other physician knows about because she sends reports to him, and that she tells the other physician that he "cannot be prescribing for the patient." *Id.* at 963. Dr. Schneider added that if the patient does it again, she "may discharge them." *Id.* at 964.

Dr. Schneider further testified that if a patient is giving drugs to a family member, she counsels them that this is a felony offense and she is "certainly not going to replace a pill that [a patient] ha[s] one less of because [she] gave it to a family member." *Id.* at 1007. Moreover, she documents the incident in the patient record. *Id.* at 1008. Dr. Schneider also noted that it is especially "egregious" when a patient is buying drugs on the street. *Id.* at 1006.

With respect to requests for early refills, Dr. Hare testified that "we try to come up with a plan that's going to meet the patient's needs until the time of the next visit," including "a reasonable type of medicine," and "a reasonable amount of medication." *Id.* at 163. Dr Hare further explained that "[w]e do our refills on a 30-day basis," and we set "the dates that the refill is supposed to occur * * * so we have all of that information in our records" and that this allows for the physician "to quickly access * * * and determine when a refill is appropriate" and "when it's not." *Id.* at 164.

To similar effect, Dr. Schneider testified that when a patient ask for early refills, she discusses with the patient why the refill is needed and documents this in the patient record. *Id.* at 949. Moreover, Dr. Schneider may decline to refill the prescription. She also noted that she has a page in her charts in which every prescription and the date of its issuance is recorded so that a refill request can be properly evaluated to determine whether it is too early.[19] *Id.*

Dr. Schneider testified that when an anonymous phone call is received which indicates that a patient is either selling or abusing a drug, "[y]ou have to look into it * * * You have to pursue all these angles." *Id.* at 830. According to Dr. Schneider, "there are some times when the information has a lot of validity and you have to follow it, and when the doctor doesn't that's a bad scene." *Id.* As to a patient using "somebody's prescription that happened to be around the house because they had a bad headache or whatever," Schneider testified that "counseling them, and advising them, and warning them and so forth may be enough." *Id.* at 836. However, if in truth it is a situation of "an active addiction problem," the physician needs to inform the patient that the addiction will interfere with the prescribing and "that they need to get some help with their addiction problem." *Id.*

Dr. Schneider further testified that there are "many sets of tools on the Internet to help pain specialists assess their patients for a history of addiction and for addiction issues and on how to monitor them and how to follow them." *Id.* at 824. In addition, a physician should use such measures as pill counts (*i.e.,* requiring patients to bring in their prescriptions to determine whether they are taking them as prescribed) and random drug screening through either blood or urine tests to determine whether the patient is taking the prescribed medication and/or taking illicit drugs. *See* GX 72, at 4 (requiring that Respondent's patients agree to "submit to a blood or urine test * * * to determine my compliance with my program of pain control medicine" and that they "bring all unused pain medicine to every office visit").[20]

Dr. Schneider testified that it is important for a doctor to communicate with other doctors. Tr. 853. Dr. Schneider sends a copy of her notes on "every visit" to the primary care physician. *Id.* If she knows of a patient's "ongoing relationship with some other specialist related to their pain problem," she also sends a copy of the notes from every visit. *Id.* After making a referral to a specialist, she also requests "a copy of that report and of imaging studies." *Id.*

Alleged General Practices

At the request of the DEA Investigators, Dr. Hare reviewed the medical records of Respondent's patients.[21] GX 46. In his first report (January 15, 2003), Dr. Hare indicated that he had reviewed the records of eight patients and found that Respondent's care exhibited the following "general problems":

- Respondent "failed to adequately evaluate" patients by not obtaining an adequate "pain history" and by not "obtaining[ing] information from previous treatment such as records of treating physicians and the previous medications used." GX 46, at 1. These would "have allowed [Respondent] to determine if there had been problems with medications or patient compliance." *Id.*
- Despite the fact that "[t]he information in [Respondent's] records was insufficient to make a proper diagnosis," Respondent "prescribed Controlled Substances." *Id.*
- Respondent "did not properly track the use of medications." *Id.* at 2. She did

[18] Dr. Hare further explained that his agreement provides the patients with instructions for obtaining refills and also establishes rules for dealing with a patient's claim that his medication was lost or stolen. *Id.* at 161. According to Dr. Hare, the agreement "makes it clear that we may or may not choose to refill the medications under those circumstances." *Id.* Continuing, he explained that his practice is "usually pretty flexible" the first time a patient reports that his medication has been lost or stolen and will issue a new prescription while counseling the patient. *Id.* at 162. If, however, it happens again, it raises a concern that the patient is "overusing their medicine" and "perhaps diverting them." *Id.*

[19] Dr. Schneider also testified that many doctors "simply write down the prescription they wrote that day in the body of the records, meaning that the next time the patient comes, they've got to be rifling back through to see what was the last one." Tr. 1001.

[20] In her testimony, Dr. Schneider vaguely suggested that in 2001–2002, the use of urine drugs screens was not generally accepted as required by the standard of care. Tr. 1013. In August 1998, however, Dr. Schneider published an article in which she noted that required her patients to "*obtain urine drug screens when asked.* This feature of the contract prevents any refusals from the patient and lets me request a urine screen at any suspicion of drug addiction problems." Jennifer P. Schneider, *Management of Chronic Non-Cancer Pain: A Guide To Appropriate Use Of Opioids,* 4 J. Care Mgmt. 10, 18 (Aug. 1998). Therein, Dr. Schneider also noted the role of asking a patient "to bring in partly-used medication containers for a pill count" in assessing whether the patient has lost control over his/her drug use. *Id.* at 13. In accordance with 5 U.S.C. 556(e), I take official note of Dr. Schneider's article and reject her suggestion that urine drug screens were not required to meet the standard of care in prescribing controlled substances by a pain specialist. Moreover, the Arizona Board found that Respondent had failed to monitor her patients for signs of current drug abuse. GX 73, at 4.

Dr. Schneider also contended that in 2001–2002, urine drugs screens were difficult to interpret, in part because of the difference between opioids (which are semi-synthetic or synthetic) and opiates (which are derivatives of morphine), and that the opioids would not show up on a standard urine drug screen and that the physician had to specifically request that the lab test for them. Tr. 892. Putting aside whether a competent physician should have known the difference between opioids and opiates and how to properly screen for them, in her article she also noted that urine drugs screens were useful in determining whether a patient is abusing illicit drugs. Were it the case that Respondent required her patients to undergo urine drug screens and mistakenly failed to request the correct test, it would be a relevant consideration. However, Respondent rarely required her patients to undergo urine drug screens.

[21] In a subsequent report, Dr. Hare reviewed the medical records for an additional seven patients. *See* GX 46A.

not "comment on the lack of patient compliance" when patients used controlled substances "in excess of the prescribed amounts." *Id.* Rather, she "usually increased the amount of the prescription to meet the patient's use of medication, rather than exercising any control over the patient's consumption." *Id.*

• Respondent switched from one controlled substance to another, "based on patient request, not on what was reasonable therapeutically." *Id.*

On cross-examination, Respondent admitted that she failed to take addiction histories. Tr. 2344. However, when asked whether she routinely failed to obtain prior medical records, she stated that "there is no obligation or rule that you have to get medical records." *Id.; but see* GX 73, at 4 (State Board's finding that "Respondent failed to further substantiate actual diagnoses and physical findings with prior medical records."). She stated that in many cases she did get parts of medical records. *Id.* at 2345. She admitted that others might not always be able to "glean" her rationale for increasing opioid dosages from her records. *Id.* at 2346. When asked whether she often issued early refills on controlled substance prescriptions without documenting the reason in her medical records, Respondent said that she did not know what the term "early refill" meant. *Id.* at 2345–46. She indicated that she did not find doing frequent MRIs useful, that with chronic pain that was just a waste of medical resources. *Id.* at 1381.

Respondent testified that she always did an evaluation on new injury cases, that there was always a physical examination, and that it was always documented. *Id.* at 2347–48. She testified that she did not ignore that some patients had histories of addiction and that she did not ignore warning signs of addiction or abuse. *Id.* at 2348–49. She admitted that she was not in contact with primary care physicians in all cases, but she also justified that in the case of J.N., noting that her primary care physician wasn't practicing due to a licensing issue. *Id.* at 2349. Respondent admitted that on occasion she failed to document the reason for increasing an opioid dose. *Id.* at 2351.

Respondent also stated that she did not believe in reprimanding patients when she found out that they were giving their controlled substances to another person. *Id.* at 2393–94. She compared the situation to one where a diabetic patient is not following his diabetic diet. *Id.*

Evidence Regarding Specific Patients

J.N.

On September 11, 2000, J.N., who was then forty-three years old and who undergone a cervical fusion in 1994, started treating with Respondent. GX 9, at 1. She "had been sexually assaulted and suffered [a] cervical fracture and needed emergency surgery." *Id.* Her pain had recently worsened, and Respondent noted in her medical record that she "need[ed] another cervical fusion." *Id.* J.N. had been on disability since 1994. *Id.*

There is no indication in J.N.'s patient record that Respondent inquired about any history of substance abuse at the initial visit. *Id.* at 1–2. At the first visit, Respondent performed a physical exam and diagnosed J.N. as having "[s]evere neck pain," "left upper extremity pain," and "signs of left cervical radiculopathy." *Id.* at 2. Respondent gave J.N. a free trial of 21 tablets of OxyContin 40 mg q8h [22] (one tablet every eight hours), 50 tablets of Oxycodone IR "1–2 q4h PRN for breakthrough pain," and a prescription for 60 tablets of Xanax 0.5 mg twice a day, with one refill, although nothing in the patient record documented that J.N. experienced anxiety. *Id.* at 2. Respondent was to "[r]echeck in 1 week." *Id.*

On September 15, Respondent noted that J.N. "is better on the OxyContin and Oxycodone. She feels less pain," yet Respondent increased the OxyContin prescription to 60 (160 mg.) tablets, with one tablet to be taken every eight hours, (a twenty-day supply), which was a four-fold increase in the dosage over the initial prescription. *Id.* Respondent also issued prescriptions for 50 milliliters of Oxyfast 20 mg/ml, "1–2 ml q4h PRN breakthrough pain," 360 tablets of MS Contin 100 mg., (4 tabs q8h), as well as 100 milliliters of morphine elixir "20 mg/ml 5 ml q6h PRN breakthrough pain." *Id.* at 2–3. Respondent noted that the latter two prescriptions were being issued in "[i]n case Pima insurance doesn't cover" the other medications. *Id.* Respondent also increased the dosage of Xanax four-fold to 2 mg. twice a day, again without any finding regarding anxiety. *Id.*

J.N. returned on October 5 and reported that she was "much better than she has been because of the MS Contin," and Respondent wrote prescriptions for MS Contin at the same dosing and also MSIR (morphine sulfate immediate release) "30 mg 6qh PRN breakthrough pain #120," to "recheck in one month." *Id.* at 3. Respondent also added a prescription for ten tablets of Dilaudid 4 mg., 1–2 four times a day. *Id.* On October 25, J.N. reported that the medications helped with her pain and with sleep and that she would like more Dilaudid. *Id.* She also reported having had an EMG/NCV with a Dr. L. on September 14, but did not know the results. *Id.* at 4. Respondent wrote prescriptions for Dilaudid, MS Contin, MSIR, as well as Fioricet for "headache." [23] *Id.* at 4. J.N. continued on Dilaudid, MS Contin, Xanax and Fioricet through June 14, 2001. *Id.* at 4–9.

J.N.'s patient record includes a Discharge Summary from University Medical Center in Tucson, Arizona, which was faxed to Respondent on January 16, 2001. Notably, the first page states that JN had a "history of IV heroin abuse". *Id.* at 13. Continuing, the Summary stated that "she quit several years ago, but started using again one week ago because of increasing abdominal pain." *Id.* at 13–14. The Summary also noted that a urine toxicology screen was "positive for opiates, barbiturates, benzodiazepines, and marijuana." *Id.* at 15.

The Discharge Summary listed five medical problems J.N. had including "Chronic pain/narcotic addiction." *Id.* at 15–16. The Summary specifically noted that J.N. was "preoccupied with her pain medications, requesting p.r.n. medications frequently" and was "resistant to weaning attempts." *Id.* Moreover, while the hospital offered J.N. "drug abuse placement," she "refused," stating that "she was not an addict, and was only unable to get off Morphine due to her medical condition." *Id.* at 16. The Summary also noted that on discharge, J.N. was given MS Contin, Dilaudid and Xanax in the doses that she had been receiving from Respondent and in quantities that would last until she could see her pain specialist. *Id.*

While the patient record indicates that Respondent was notified on

[22] The record establishes that "q" means every, and that "h" means hour(s), and "hs" at bedtime. *See* Tr. 1122 & RX L, at 6; Tr. 1151 & GX 9, at 8; Tr. 1165 & GX 13, at 6; Tr. 1175. Thus, "q4h" means every four hours, "q6h" means every six hours, "q8h" means every eight hours, and "q12h" means every twelve hours. *See* Tr. 1122 & RX L, at 6; Tr. 1175; *id.* at 1151 & GX 9, at 8. In addition, the abbreviation "BID" means "twice a day," Tr. 355 & RX 13, at 1; "TID" means "three times a day," Tr. 403 & RX 13, at 1; and "QID" means "four times a day." *Id.* at 358 & GX 22, at 18. The abbreviation "PRN" means "as needed." *Id.* at 1174. It is also undisputed that prescribing in excess of 4 grams or 4000 mg. per day of drugs containing acetaminophen risks liver toxicity. *See id.* at 403–04.

[23] The patient record also indicated that Respondent issued her a prescription for Amoxicillin, a non-controlled drug.

December 4, 2000 that J.N. had been hospitalized, GX 9, at 5, she did not obtain the Discharge Summary for another month. Moreover, J.N.'s medical record contains a note dated January 24, 2001, that Respondent "received records from UMC and discharge diagnosis was sludge in gallbladder"; the note contains no mention of either the results of the drug screen done by the hospital or of J.N's statement to the hospital staff that she had recently started using heroin again. *Id.* at 6.

J.N.'s record contains no indication that Respondent attempted to monitor her use of controlled substances through drug screens and pill counts. *See generally id.* Moreover, the medical record contains no indication that Respondent questioned J.N. about her use of marijuana, heroin, or the barbiturate (which Respondent had not prescribed to her).

On subsequent visits, Respondent primarily prescribed 120 tablets of Dilaudid 4 mg. (QID—one tablet four times a day), 180 tablets of MS Contin 200 mg. (two tablets every eight hours), Xanax 2 mg. (BID –one tablet twice a day), and Restoril (temazepam) (two tablets at bed time).[24] *Id.* at 5–9. After J.N.'s hospitalization, all of the MS Contin prescriptions and all but two of the Dilaudid prescriptions were for a quantity equaling 30 days of dosing. *See id.* Approximately half of the Dilaudid and MS Contin prescriptions were refilled at least five days early, with some being refilled as early as eight or nine days before the previous prescription would have run out. *See id.* (Rxs for: 180 MS Contin on 12/18, 1/11, 2/1, 2/26, 3/20, 4/19, and 5/14; for 120 Dilaudid on 1/11, 2/1, 2/26, 3/20, 4/19, and 5/14).

J.N. died of an overdose on June 18, 2001. According to a police report, "several syringes were found at the scene," as well as various drugs including hydromorphone and morphine sulfate.[25] GX 8, at 18. The police also found a white powder in the living room and were told by J.N.'s boyfriend that the two of them would mix "her prescription medication with water and inject it using the used syringes." GX 8, at 19. Moreover, in an interview with investigators, J.N.'s boyfriend stated that she would crush up the Dilaudid (hydromorphone) she obtained from Respondent and inject it. GX 43, at 11. J.N.'s boyfriend also related that "[s]he didn't have veins" and that it was very hard to get blood from her. *Id.* at 22. Yet there is no indication in J.N.'s medical record that Respondent ever noticed this. *See generally* GX 9.

The Medical Examiner determined that the cause of J.N.'s death was "acute intoxication due to the combined effects of opiates, cyclobenzaprine, and amitriptyline." GX 8, at 2. Respondent disputed the Medical Examiner's conclusion. One of her experts (Dr. Schneider) maintained that it was not "black and white that a morphine overdose was her cause of death," and indicated (in response to Respondent's question whether her opinion would change if J.N. had been on the same dose of extended release morphine for the previous ten months), that unless J.N. had "suddenly taken a lot more" of the drug, she would question whether J.N.'s death was caused by a morphine overdose. Tr. 921–22. Dr. Schneider was not asked, however, whether her opinion would be different if J.N. had taken the drug intravenously.

Relatedly, another of Respondent's experts (Dr. O'Connor) testified that J.N.'s taking of the cyclobenzaprine and amitriptyline (neither of which was prescribed by Respondent) would have "certainly" caused her to have a heart attack. *Id.* at 1154. Yet the Medical Examiner did not note any evidence of a heart attack. *See generally* GX 8. Moreover, when Respondent asked her whether there are "any interactions between opiates, such as morphine, and * * * amitriptyline or cyclobenzaprine," the witness answered:

> Certainly in [an] opioid-naïve patient, if they took * * * Tylenol with codeine, and then they took some cyclobenzaprine or flexeril on top of that * * * they might get more sleepy. The same goes for amitriptyline or tricyclics. In an opioid-tolerant patient, no.

Tr. 1157. The expert's testimony does not make clear whether her answer as to the effect that would occur in an opioid-tolerant patient applies to a patient taking opiates other than Tylenol with codeine, a drug which is far less potent than either MS Contin 200 mg. or Dilaudid. Furthermore, the Medical Examiner did not conclude that J.N.'s death was caused solely by her use of morphine, but rather, the combined effects of opiates and the other two drugs.[26] GX 8, at 2.

In any event, it is not necessary to resolve the factual dispute. Even if J.N's intravenous use of either Dilaudid or MS Contin did not contribute to her death—it just being a coincidence that syringes and crushed medication were found in the vicinity of her body—the evidence nonetheless clearly established that she was abusing drugs, that Respondent had reason to know that she was abusing drugs, and that Respondent failed to properly supervise her use of controlled substances.

With respect to the discharge summary, which clearly indicated that J.N. was abusing drugs, Respondent testified that she failed to read the entire hospital discharge summary because it "was a lot of pages." Tr. 2367. According to Respondent, she "looked at the beginning" and "looked at the end" of the document but that the reference to J.N.'s heroin abuse was "buried in" the report. *Id.* at 1850 & 2367–68.[27]

The discharge summary was, however, only five pages in length (and the fifth page did not contain any medical information). *See* GX 9, at 13–17. Moreover, the reference to J.N.'s "history of IV heroin abuse" was on the bottom of the first page. *See id.* at 1.

In her testimony, Respondent also maintained that that she was unaware that J.N. had crushed and injected her medication until she inferred it from a question DI Llenas asked her the day of the search warrant in May 2002. Tr. 2377. Yet other evidence indicated that J.N. had no veins and that it was difficult to draw blood from her, something which Respondent apparently never noticed.

With respect to J.N.'s initial visit, Dr. Hare concluded that Respondent "failed to obtain [an] adequate history * * * and [that] she did not obtain records from * * * the neurologist, by whom the patient had been evaluated," that she conducted a "minimal and inadequate physical examination," and that "the evaluation was inadequate to allow proper diagnosis and therefore the prescribing of controlled substances." GX 46, at 4. As to J.N.'s second visit, Dr. Hare's review of her patient record noted that her "already large dose of

[24] Both Xanax (alprazolam) and Restoril (temazepam) are benzodiazepines and schedule IV depressants. *See* 21 CFR 1308.14(c).

[25] According to the police report, twenty syringes were found, several of which had been opened. GX 8, at 18–19. In addition to hydromorphone and morphine sulfate, the police found Duramorph, methocarbamol, Pancrease, Zyprexa, Naproxen, and Cimetidine. *Id.* at 18.

[26] Respondent also introduced into evidence an article discussing a survey of blood levels of opiates in opioid-tolerant patients. *See* RX 39. More specifically, Respondent pointed to a table which indicated that a patient with a Morphine SR blood level of 2837 ng/ml, a level which was higher than that found in JN (2374 ng/ml) following her death, was capable of functioning. *Compare* RX 39, at 4 with GX 8, at 10. Respondent did not, however, offer any evidence that she conducted blood tests of J.N. while she was alive to show what level she was functional act.

[27] Respondent testified that, despite being aware of the addiction history, the attending physician had continued the medications that she prescribed for JN—MS Contin 400 mg., Dilaudid 2 mg., and immediate release morphine 30 mg. Tr. 2368; GX 9, at 13. The Respondent was also listed as J.N.'s pain specialist in the discharge report. GX 9, at 13.

OxyContin" was "dramatically increased" "six-fold" [28] on September 15, 2000, "despite the patient's improvement." *Id.* He also noted that the strength of the alternative prescription that was written for MS Contin 100 mg. would "translate to about 8 times the original OxyContin [sic] dose." [29] *Id.* at 5.

Dr. Hare further noted that on January 11, 2001, the patient record "indicate[d] that the patient's [niece] died and that the patient was quite distressed." *Id.* He also remarked that "[t]his was the very first mention in the records of anxiety and depression, even though the patient had been treated with Xanax for a considerable period of time prior to this." *Id.* Dr. Hare also noted that on several occasions Respondent prescribed medications for J.N. that other doctors, in other specialties, had previously prescribed for J.N., without attempting to coordinate care with those physicians. *Id.*

Dr. Hare also observed that Respondent did not notice signs of abuse, did not acknowledge the Discharge Summary's information about J.N.'s current abuse and history of substance abuse, and failed to treat J.N. for depression or give a psychiatric referral.[30] *Id.* at 6. Dr. Hare thus concluded that Respondent's care of J.N. was "substandard" and "probably negligent." *Id.* at 6.

With respect to J.N. (as well as three other patients N.F., W.F., and C.O.), Dr. Schneider observed in her report that:

> All had evidence of "aberrant drug-related behaviors" which should have been pursued but weren't, and all received early refills without adequate documentation. These charts certainly showed problems which indicated that [Respondent] needed additional education about obtaining an addiction history, careful monitoring, and review of the "big picture."

RX K–1, at 6.

W.F.

W.F. first visited Respondent in September 2001. At that time he was a disabled 44-year-old veteran. GX 13, at 1. W.F. had been in a severe jeep accident in 1973 while in the Marine Corps, fracturing his pelvis, femur, right wrist and left mandible. *Id.;* Tr. 1958. He walked with crutches. GX 13, at 1.

At the first visit, W.F. brought in an impairment rating from the Veteran's Administration (VA) establishing that he was disabled. *Id.* Respondent did not, however, contact the VA to obtain copies of his treatment records. *Id.* Nor is there any indication in the patient record that Respondent inquired about W.F.'s substance abuse history at the initial visit, nor is there any indication that she asked for pain ratings. *See id.* Respondent's physical exam involved observing W.F. walk with his crutches, noting that he had "severe pain with lumbar range of motion," "tenderness over bilateral lumbar paraspinals," and "tenderness over [his] right wrist and pain with right wrist range of motion." *Id.*

W.F.'s patient file includes several letters which advised Respondent that he had a history of substance abuse. The first letter, which was dated January 8, 2002, was written by Dr. H.G., a psychiatrist with Cope Behavioral Health. GX 13, at 13. Therein, Dr. H.G. explained that W.F. was "currently under court ordered treatment by the Psychiatric Security Review Board which mandates that all [of] his medications are to be prescribed by either psychiatrists at Cope * * * or by the VA." *Id.* The letter further states that W.F.'s "case manager * * * has recently learned that [he] was receiving narcotics & psychotropics from your office; unfortunately, this history has repeated itself to poor outcomes in the past for [W.F.] (addiction issues)." *Id.*

On January 24, 2002, Dr. H.G. sent another letter to Respondent. *Id.* at 15. Therein, he indicated that it was permissible for Respondent to prescribe for W.F. because he could not get an appointment at the VA until April. Dr. H.G. noted, however, that "[a]lthough he currently denies symptoms of abuse, please be aware he has had narcotics addiction problems in the past." *Id.* at 15.

Finally, on January 28, 2002, J.G., a case manager at Cope Behavioral Health, indicated that Cope had "received a phone call this afternoon from a family member of [W.F.], who is concerned that [W.F.] might be abusing his pain meds." *Id.* at 17.

The patient record contains some indication that on January 29, 2002, Respondent discussed addiction issues with W.F., as Respondent wrote: "[p]atient insists that the medications help with the pain, and he cannot function without the medications." *Id.* at 5. Respondent wrote prescriptions for 100 Methadone 10 mg. 1–2 QID (one to two tablets four times a day) and 100 Roxicodone 30 mg. q4h PRN (one tablet every four hours as needed for pain). *Id.* at 6. Respondent issued the same prescriptions on February 11, 2002. Respondent had also previously written prescriptions for temazepam with multiple refills on October 29, 2001, and December 17, 2001. *Id.* at 3, 5.

On February 24, 2002, W.F. was found dead. The Medical Examiner's report concluded that W.F. "died of undetermined cause. Possibilities include seizure related and drug intoxication." GX 11, at 2. A toxicology report found that W.F. had a temazepam level of 1148 ng/ml; *id.* at 14, however, the Medical Examiner subsequently indicated in a letter to Respondent that this level of the drug "would not be expected to cause death." RX 52. The Medical Examiner also found that "[o]ther drugs identified in his body were in too low a concentration to allow me to come to the conclusion that death was likely the result of the combination of drugs, including Temazepam." *Id.* Relatedly, the toxicology tests found only a small amount of oxycodone and no presence of methadone in W.F. GX 11, at 9–15.

Dr. Hare observed that at the initial visit, Respondent did not obtain an adequate medical history and did not inquire about substance abuse issues. GX 46, at 3. Also, "the physical examination was minimal and inadequate to characterize various pain complaints." *Id.* Dr. Hare also faulted Respondent, who then knew of the history of substance abuse, for not limiting W.F.'s medication and not "requesting toxicology screens * * * to determine if he was using medications other than those she prescribed, or actually using the medication she was prescribing." *Id.* at 4. Dr. Hare further noted that the toxicology report done as part of the autopsy "was negative for opioids which he had been prescribed in sizable amounts" and that "[t]he lack of opioids would suggest that the patient was diverting significant portions or the entire prescriptions." *Id.*[31] He concluded that Respondent's care was "substandard and inappropriate regarding the controlled substance prescriptions." *Id.*

[28] Dr. Hare noted that the OxyContin 160 mg. was to be taken every four hours, but the patient chart indicated only every eight hours. I find that the dose increase was four-fold, not six-fold.

[29] In a patient narrative that Respondent wrote on C.O., which was included in C.O.'s medical record, Respondent wrote of her prescribings that "[t]he dose was increased by approximately 50%–100% at a time, when necessary, as is the appropriate way to titrate opioids." GX 36, at 35.

[30] Respondent testified that she made efforts to refer J.N. to a psychiatrist but did not record that in the patient file. Tr. 2356.

[31] The ALJ's findings contrast this with an excerpt from Dr. Weinstein's report in which she wrote: "Dr. Hare states, 'considering the huge amounts of medications and lack of side effects, the patient was likely diverting,' an inference that cannot be made from therapeutic information alone." ALJ at 82. I note that this comment was made in response to the patient file of a patient other than W.F. Given that the toxicology screen found no evidence of methadone, a drug with a very long half life, it is reasonable to infer that W.F. was not been taking the medication prescribed but rather was diverting it. Moreover, W.F. was identified by Dr. Schneider as a patient who had likely engaged in aberrant drug-related behavior. RX K–1, at 6.

On cross-examination, Respondent testified that she had heeded the psychiatrist's warning about the past heroin addiction and also his "judgment" that pain medications were appropriate.[32] Tr. 2382. She admitted that she never did an addiction history. *Id.* In her testimony, Respondent did not, however, respond to Dr. Hare's contention that her physical exam was minimal and inadequate.

The ALJ credited Respondent's testimony that oxycodone is a short-acting medication and that half of it is gone after two hours. ALJ at 82 (citing Tr. 2165). The ALJ also credited Respondent's testimony that it was "quite possible that a patient could take a level of less than five," and that this "doesn't mean that a person is not taking his or her oxycodone." *Id.* Respondent did not, however, address why there was no methadone, a medication with a much longer half-life than oxycodone, in W.F. at the time of his death.

W.F. was one of those patients about whom Dr. Schneider concluded that there was "evidence of 'aberrant drug-related behaviors', which should have been pursued but weren't." RX K–1, at 6. Dr. Schneider further noted W.F. had "received early refills without adequate documentation and explanations," and that Respondent's charts indicated that Respondent "needed additional education about obtaining an addiction history, careful monitoring and review of the big picture." *Id.*

M.D. and S.R.

M.D. and S.R., who were both patients of Respondent, were unmarried but lived together. M.D. first visited Respondent on May 21, 2001, when he complained of having "fallen off a bicycle" and of a "back and leg injury." GX 17, at 1. M.D. further related that another physician had prescribed to him OxyContin 80 mg. (at a dosing of one tablet every twelve hours), Oxyfast, and methadone, but that the physician had left the office and that he had been off the drugs for several months. *Id.* Respondent did not, however, attempt to contact the other physician's office to verify the statement and/or to obtain treatment records.

Respondent's physical exam noted that M.D. was a "lethargic male in no acute distress with antalgic limp, favoring left lower extremity," "pain with range of motion of the left ankle," "tenderness over bilateral thoracic and lumbar paraspinals," and "decreased lumbar range of motion associated with pain." *Id.* Respondent did not, however, otherwise indicate how severe M.D's pain was. *Id.* Respondent also had M.D. sign a pain contract and issued him prescriptions for 60 OxyContin 80 mg. q12h, 30 milliliters of Oxyfast, and 30 tablets of Oxycodone 5 mg. PRN. *Id.*

Later the same day, Respondent documented having received a phone call (apparently from a pharmacy) reporting that M.D. was "known to forge prescriptions and was arrested." *Id.* at 2. Respondent notified the pharmacy where M.D. had indicated on the pain contract that he would fill his prescriptions not to fill them. *Id.* M.D., however, filled the OxyContin prescription at a Walgreen's pharmacy. *Id.*

On June 8, 2001, M.D. returned to Respondent seeking a new OxyContin prescription. *Id.* M.D. reported that he was taking double the dose of the OxyContin. *Id.* He also did not remember what had happened at the pharmacy which had reported him to Respondent. *Id.* Respondent refused to issue the prescription. *Id.*

There are no further visits recorded in M.D.'s patient record. *Id.* The record indicates, however, that on October 8, 2001, the patient pharmacy manager at Tucson Medical Center reported that M.D. had been admitted to the hospital in a coma seven days earlier and had in his possession methadone 40 mg. tablets which were contained in a prescription bottle; the label indicated that the prescription was for Dilaudid 4 mg. and had been issued by Respondent to S.R.[33] *Id.*

S.R. first saw Respondent on August 3, 2001, complaining of abdominal and pelvic pain. GX 15, at 1. S.R. reported that she had a history of interstitial cystitis and active hepatitis C, but apparently she did not bring records about either condition with her. *See id.* S.R. indicated that she was taking Xanax and Vicodin, which she obtained from another doctor. *Id.* She also stated that she was taking her deceased husband's OxyContin and Dilaudid.[34] *Id.*

Respondent's physical exam indicated that S.R. was "in moderate distress," that she had "pain with ambulation and limp," and had "tenderness over [her] abdomen." *Id.* Respondent diagnosed S.R. as having "interstitial cystitis and chronic pain," as well as Hepatitis C. *Id.* Respondent discussed the risks and benefits of long-acting opioids, including addiction and side effects, and prescribed Dilaudid 2 mg. "QID #30," OxyContin 10 mg. "q12h #30," and Xanax 0.5 mg. "TID PRN #90." *Id.* There is no indication that Respondent contacted the physician who had prescribed Vicodin and Xanax to her. *See id.* Moreover, there is no indication as to why she prescribed Xanax, an anti-anxiety drug. Nor did she counsel S.R. about the use of her deceased husband's medications. Tr. 2353.

S.R. returned seventeen days later, reported that she was out of Dilaudid and OxyContin, and asked for stronger medication. GX 15, at 1–2. Respondent found that S.R. had "pain with ambulation and limp" and "tenderness over [her] abdomen." *Id.* at 2. Respondent increased both the strength and quantity of the Dilaudid to 4 mg. "QID #60," and the strength of the OxyContin to 20 mg., with the same dosing and number of tablets ("q12h #30"). She also issued a new prescription for Xanax, 0.5 mg., TID PRN #90. *Id.* at 2.

On September 4, 2001, S.R. again saw Respondent. Respondent noted that S.R.'s urologist had "diagnosed interstitial cystitis," and that she needed to "obtain records from Dr. [M]." *Id.* Respondent also noted that while S.R. "gets abdominal pain," "she is more comfortable." *Id.* Respondent again wrote prescriptions for Dilaudid and OxyContin, doubling the strength of the latter to 40 mg. with the same dosing instruction of "q12h." *Id.*

On September 18, S.R. complained of "continued pain" and wanted a higher dose of OxyContin even though she was "more comfortable." *Id.* Respondent doubled the strength of the OxyContin to 80 mg. "q12h #30" and also wrote a prescription for 60 Dilaudid 4 mg. *Id.* at 3. Respondent noted that she "sent another request for records from Dr. [M]." *Id.*

On October 2, Respondent discontinued OxyContin in favor of MS Contin, 100 mg. "q8h #100," which was "less expensive," and also wrote a

[32] Relatedly, the ALJ quoted Dr. Weinstein's report that Respondent "had received communication from a treating psychiatrist, agreeing that the medications she was prescribing for their mutual patient were appropriate." ALJ at 80 (FOF 289; quoting RX 32, at 3). Dr Weinstein also wrote, "In this instance, [Respondent] had a concurring opinion from a psychiatrist for her management plan." RX 32, at 3.

This is a fundamental mischaracterization of the evidence as there is no indication in W.F.'s file that Respondent had a plan to manage his use of controlled substances. Moreover, Dr. H.G.'s letter merely stated that because W.F. could not see the VA for another three months, he was "in agreement that he should see you until his appointment." GX 13, at 15. Moreover, Dr. H.G. and his staff repeatedly cautioned Respondent about W.F.'s narcotics abuse history. *See id.* at 13–15. This is hardly a concurrence in whatever prescriptions Respondent would write.

[33] On January 6, 2002, M.D. was found dead at his residence. GX 18, at 3. The Medical Examiner found that M.D.'s death was caused by "opiate, cocaine and methadone intoxication." *Id.* at 2. Respondent had not seen M.D. in seven months.

[34] This incident of diversion furnished the basis of one of the counts of Accessory After the Fact in Respondent's plea agreement. *See* GX 6, at 7.

prescription for Dilaudid. *Id.* She also issued S.R. a prescription for 100 Xanax (1 mg.), with two refills, which was double the strength of the previous prescription, after S.R. had claimed that "the pills got wet and they dissolved." *Id.* Respondent also noted that S.R. "has severe anxiety and needs the Xanax" and was complaining of abdominal pain. *Id.* The next day Respondent gave S.R. a prescription for 200 Methadone 10 mg. "3 tabs QID" for pain when S.R. returned, having not filled the MS Contin prescription due to its cost. *Id.*

On October 8, Respondent received the phone call described above reporting that M.D. had been admitted in a coma seven days earlier. *Id.* at 4. At S.R.'s next visit, which was on October 12, Respondent "explained to [her] that she must be very careful with her medications." *Id.* According to the patient record, S.R. "denie[d] that [M.D.] could have ever gotten his [sic] medications." *Id.* Respondent reported that S.R. was still complaining of abdominal pain and issued her a new prescription for 60 Dilaudid 4 mg. *Id.* Moreover, a week later, Respondent issued S.R. a new prescription for 200 Methadone 10 mg. Respondent did not institute any kind of monitoring on S.R.'s use of her medication. *Id.*

On November 2, S.R. returned "complaining of abdominal pain." *Id.* Respondent referred her to another physician "for interstitial cystitis treatment and work-up." *Id.* Respondent also wrote S.R. prescriptions for 60 Dilaudid 4 mg. and 200 Methadone 10 mg. *Id.*

On November 19, S.R. returned to obtain more "prescriptions, and [was] very irate that they weren't ready." *Id.* Respondent explained she would not write prescriptions for more opioids without further documentation of S.R.'s condition. *Id.* at 5. Respondent also noted that S.R. had indicated that she had not seen the physician who was to evaluate her for cystitis because her primary care doctor had not authorized the visit. *Id.*

On December 4, the patient record indicates that S.R. "HA[d] CALLED FOR THE PAST 3 DAYS REQUESTING RX—EVERYONE HAS EXPLAINED TO HER THAT UNTIL MEDICAL RECORDS ARE RECEIVED TO CONFIRM HER CONDITION RX WILL NOT BE WRITTEN PER [Respondent]." *Id.* S.R. offered money for the prescriptions and said that she would go back to Detroit to pick up her medical records "BUT NEED[ED] MEDS TO GO." *Id.* Respondent told her to go to her primary care physician to get the prescriptions. *Id.* The final entry, December 14, indicates that S.R.'s medical records were printed out for her to pick up. *Id.*

Dr. Hare did not review M.D.'s patient file, but he did review S.R.'s. Dr. Hare found that Respondent performed only a "minimal" physical examination and did not insist on getting documentation of the diagnosed interstitial cystitis and hepatitis until she had treated S.R. for several months. GX 46A, at 13. He indicated that Respondent's "evaluation of the patient was insufficient to justify the prescribing of controlled substances." *Id.* at 14. Dr. Hare further found that Respondent "escalated opioid doses by patient request, not because of favorable responses." *Id.* While he found that it was "unlikely" that Respondent's prescribing contributed to S.R.'s death, he suggested that Respondent's prescribing "perpetuated an ongoing drug abuse problem." *Id.*

J.R.

J.R. (GX 24) had been convicted of distributing marijuana. Tr. 1995. Respondent maintained, however, that he had turned his life around and was proud of that. *Id.* J.R. first visited Respondent at her Calmwood Medical clinic in August 1999, but she had treated him at another clinic previously and had not transferred those medical records into his chart. *See* GX 24, at 1.

Respondent maintained that J.R. needed to take "a very high dose of OxyContin" in order to work, and that without the medication, the migraine headaches were so bad he could not function. Tr. 1996–97. Respondent testified that she thought J.R. was a legitimate patient. *Id.* at 1997.

The ALJ also credited the testimony of Dr. O'Connor that she saw J.R. "when he picked up his prescribed medications at Wilmot Pharmacy" and he "was functional, his words were never slurred, and he appeared 'fine.' " ALJ at 106. There is, however, no evidence in the record that Dr. O'Connor ever worked at Wilmot Pharmacy, *see* Tr. 1107–08, where J.R. picked up nearly all of his prescriptions. GX 23; *see also* RX 8 (affidavit of Dr. O'Connor indicating places of employment which do not include Wilmot Pharmacy). Moreover, Dr. O'Connor testified that she "remember[ed] how I talked to him on the phone several times." Tr. 1129. At no point did Dr. O'Connor testify that she had actually seen J.R. when he picked up his prescriptions.[35] *Id.* at 1129–30. I therefore reject the ALJ's finding.

At J.R.'s first visit recorded in the patient file, August 25, 1999, Respondent noted that he suffered "chronic severe migraine headaches," and that he "has been on opioids with good relief."[36] GX 24, at 1. She also noted that he was on "methadone because it is inexpensive." *Id.* That day she prescribed Oxycodone IR "2 tabs q8h 180" (a thirty-day supply), Percodan #200 (with no dosing instruction), OxyContin 40 mg. "4 tabs q8h #360 (a thirty-day supply), and methadone 5 mg. "QID #60 (a fifteen-day supply). *Id.* On September 15, twenty-one days later, Respondent again prescribed to J.R. Oxycodone IR "2 tabs q8h #180 (a thirty-day supply), Percodan #200, OxyContin 40 mg. "4 tabs q8h #360" (a thirty-day supply), and methadone 5 mg. "QID #60" (a fifteen-day supply). *Id.* J.R.'s record also indicated that on September 22 (a week later), she issued "replacement prescriptions," but gave no reason for doing so. *Id.*

On October 20, J.R. again visited Respondent. Respondent wrote prescriptions for Oxycodone IR "2 tabs q8h #180" (a thirty-day supply), Percodan #200, OxyContin 40 mg. "4 tabs q8h #360" (a thirty-day supply), and Methadone 10 mg. "QID #60." *Id.* No reason was cited for increasing the Methadone. *See id.* On November 11 (twenty-two days later), J.R. returned and reported that he had taken "extra medicine this week because of low back pain," which "started a few days ago." *Id.* at 2. Respondent wrote him prescriptions for Methadone 10 mg. "QID #60," Oxycodone IR "2 tabs q8h #180" (a thirty-day supply), OxyContin 40 mg. "4 tabs q8h #360" (a thirty-day supply), and "OxyContin #100." *Id.* at 2. The patient chart indicates that the prescriptions for Oxycodone and the 360 OxyContin 40 mg. were for the Patient Assistance Program (PAP), with the 100 extra OxyContin "to fill now until medications arrive in the mail." *Id.* On November 18, Respondent wrote another prescription for OxyContin 40 mg. "4 tabs q8h #360" (a thirty-day supply). *Id.*

On December 13, Respondent wrote the same prescriptions for 360 OxyContin 40 mg., 60 Methadone 10 mg., 180 Oxycodone IR, and 200 Percodan. *Id.* The record indicates that the Oxycodone prescription was for PAP, and Respondent additionally wrote a prescription for Valium 10 mg.

[35] Dr. O'Connor also testified that she was aware of J.R.'s diagnosis and his work situation. Tr. 1129–30. With respect to the latter, she maintained that it was "just general patient knowledge. You ask them what they do, how their life is, to assess any addiction factors or anything else like that." *Id.* at 1130. Again, there is no evidence that Dr. O'Connor worked at the pharmacy where J.R. filled his prescriptions. Her testimony is not credible.

[36] It is unclear, however, whether Respondent had previously treated J.R. for migraines.

"TID #60 with three refills" (an eighty-day supply), and for Fioricet.[37] *Id.* The patient record gives no indication at to what medical purpose supported the prescribing of the Valium. *Id.*

On January 4, 2000, Respondent wrote that J.R. "continues on Oxycodone IR and OxyContin around the clock for excellent control of migraine headaches." *Id.* She wrote the usual prescriptions for 360 OxyContin 40 mg. (thirty-day supply), 60 Methadone 10 mg., 200 Percodan and 180 Oxycodone IR (thirty-day supply), the latter "for PAP." *Id.* at 3.

On January 21 (seventeen days later), J.R. returned and received two prescriptions for 360 OxyContin 40 mg. (two thirty-day supplies; "[o]ne prescription to be mailed to PAP, and other one to be filled locally"), and prescriptions for Methadone, Percodan and Oxycodone IR (again a thirty-day supply of the latter for PAP). *Id.* On February 7 (again after only seventeen days), Respondent again wrote two prescriptions for 360 tablets of OxyContin 40 mg., with one to be filled locally and one to be sent to PAP. *Id.* At the same visit, Respondent also wrote prescriptions for 180 Oxycodone IR (for PAP), 60 Methadone, and 200 Percodan. *Id.* at 4.

After just another fifteen days, on February 22, 2000, J.R. reported "a severe headache on Sunday, February 20." *Id.* Respondent planned to "[c]ontinue same dose of medications," but "[i]f he has another severe headache within the next 3 months," she planned to "increase his dose by probably about 60–80 mg per day." *Id.* She again wrote two prescriptions for 360 OxyContin 40 mg. (each a thirty-day supply), one "to be mailed to PAP, and other one to be filled locally." *Id.* She also prescribed 100 Methadone 10 mg., 200 Percodan, and 180 Oxycodone IR (the latter for PAP, a thirty-day supply).

Twenty days later, on March 13, J.R. returned with another report of a "severe headache," having taken "extra of the OxyContin and Oxycodone IR, and also methadone." *Id.* Respondent decided to increase both the OxyContin and Oxycodone IR and wrote two prescriptions for both drugs with one to be sent to the PAP: OxyContin 40 mg. "5 tabs q8h #450" (a thirty-day supply), and Oxycodone IR "4 tabs q8h #360" (a thirty-day supply). *Id.* at 5. She also wrote prescriptions for an increased dosage of Methadone 10 mg. ("3 tabs TID #100") and for Percodan ("2 tabs q4h #200"). *Id.* The next day, for no reported reason, Respondent wrote two new prescriptions for OxyContin and Oxycodone IR, backdating them to March 5. *Id.* No mention was made of whether J.R returned the prescriptions which she wrote the day before. *See generally id.*

Eight days later, on March 22, J.R. returned and reported that he would be going to "a rally in California," and that he needed "extra medications for control of migraine headaches." *Id.* Respondent prescribed Methadone 10 mg. "3 tabs TID #30" (3–4 days supply) and OxyContin 40 mg. "5 tabs q8h #30" (two-day supply). *Id.*

On April 12 (twenty-one days later), J.R. again reported a severe headache and that he was taking "extra medications." *Id.* Respondent again wrote two prescriptions each for a thirty-day supply of 450 OxyContin 40 mg. and 360 Oxycodone IR, as well as Methadone 10 mg. "TID #100" and 200 Percodan. *Id.* at 6.

On May 2 (twenty days later), the patient record states that J.R. "needs to increase his OxyContin because he had a severe headache for 3 days." *Id.* Respondent wrote a prescription for OxyContin 80 mg. "q8h #270" (a thirty-day supply) and noted that the next day, she would write prescriptions for OxyContin and Oxycodone IR for the PAP. *Id.*

On May 8 (six days later), Respondent wrote two prescriptions for OxyContin: one for 270 tablets of 80 mg. strength for PAP (a thirty-day supply based on her dosing instruction of 3 tabs q8h) and one for 450 tablets of 40 mg. strength (also a thirty-day supply). Moreover, Respondent wrote prescriptions for 360 Oxycodone IR (2 tabs q8h, a sixty-day supply) for PAP, as well as a 180 Oxycodone IR (2 tabs q8h, a thirty-day supply). *Id.* at 7.

On May 15, (a week later), Respondent wrote additional prescriptions which were to be filled by PAP: 270 tablets of OxyContin 80 mg. and 360 tablets of Oxycodone IR "to remail." *Id.* Two days later, Respondent gave J.R. prescriptions for a one-week supply of both OxyContin 40 mg. (126 tablets) and Oxycodone IR (84 tablets), the latter being a "free 1 week trial." *Id.*

On May 31, Respondent wrote prescriptions for Percodan "q4h PRN #200," Methadone 10 mg. "QID #120" (a thirty-day supply), OxyContin 40 mg. "5 tabs q8h #540 (a thirty-six day supply) and Oxycodone IR "4 tabs q8h #360" (a thirty-day supply). *Id.*

On June 9, when J.R. complained "of worse headaches," Respondent concluded that "we need to increase the OxyContin dose again" because he "doesn't tolerate any lower dose of OxyContin." *Id.* at 8. She again wrote for OxyContin 80 mg. "3 tabs q8h #270" (thirty-day supply). Six days later, on June 15, Respondent wrote prescriptions for OxyContin 80 mg. "3 tabs q8h #360" (thirty-day supply), Methadone 10 mg. "QID #120" (a thirty-day supply), OxyContin 40 mg. "5 tabs q8h #540" (a thirty-six day supply, with no explanation of why J.R. needed both 40 and 80 mg. OxyContin), and Oxycodone IR "4 tabs q8h #360" (thirty-day supply). *Id.* The final sentence in the record for that date is "For PAP program," but it does not indicate whether that is just the Oxycodone or all the prescriptions. *Id.*

This pattern of early prescribing and not explaining seemingly duplicative dosages continues in the treatment of this patient through its conclusion in April 2002. Notwithstanding the large quantities of drugs she was prescribing to J.R., there is no indication in the medical record that Respondent ever required him to undergo blood or urine tests to determine whether he was actually taking the drugs. Nor did she require him to bring in his medications for pill counts.

Subsequent to Respondent's treatment of J.R., his next doctor (Dr. H.) wanted to reduce the amount of controlled substances that he was prescribed, as Dr. H. suspected diversion. GX 70, at 35–36. Dr. H. also told a DI that a third doctor who later treated J.R was surprised that, when J.R. reported running out of medication, he was not experiencing withdrawal symptoms. *Id.* at 36. That doctor reportedly referred J.R. for detoxification treatment. *Id.*

Respondent asserted that Dr. H. had given contradictory statements by saying that he was "positive [J.R.] is diverting and selling all of those medications, and not taking them, and yet he is exhibiting signs of withdrawal." Tr. 1994. The record indicates, however, that Dr. H. had been told by the third physician that J.R. was not "exhibiting any signs of withdrawal." GX 70, at 36. According to Respondent, J.R. ultimately self-declared as a heroin addict in order to get methadone. Tr. 2001.

Regarding J.R., Dr. Hare observed that while Respondent had previously treated him at another clinic, there were no records from the clinic "indicating evaluation to confirm the diagnosis of migraine headache or to further characterize his headaches," and that there were no "records from other physicians or record of treatment with" non-opioid medications even though migraines "typically respond to a number of non-controlled substance medications" which should have been tried first. GX 46, at 13.

[37] Fioricet is not a controlled substance.

Relatedly, Dr. Schneider testified that in treating a migraine headache of a recurring nature, a CAT scan should be ordered even though it will probably be "completely normal." Tr. 872. There is, however, no evidence in the patient record that Respondent ordered a CAT scan for J.R.

Dr. Hare further noted that Respondent was giving J. R. "duplicate prescriptions for OxyContin, one to fill immediately and one to send to the Patient Assistance Program, and yet Respondent did not seem aware that she was giving him twice the amount of medication." [38] GX 46, at 14. He further noted that, while in March 2000, J.R. was only periodically having worse headaches, Respondent increased the dosing of both the OxyContin (long-acting) and Oxy IR (short-acting), when "an increase in short-acting medications would have been a more appropriate step, if any change was indicated." *Id.* Finally, Dr. Hare concluded that there was "no treatment plan," and that "[a]ny time this patient wanted to increase medications, he did, and [Respondent] accommodated him by increasing the prescriptions." GX 46, at 14–15.

N.F.

N.F. had previously been identified by two faxnets issued to Tucson area pharmacies by the Arizona State Board of Pharmacy as having allegedly engaged in doctor shopping and calling in fraudulent prescriptions for Lortab (hydrocodone). GX 35; Tr. 287–89. The faxnets were dated May 8, 2000, and April 13, 2001. GX 35, at 1–2.

In February 2003, a DEA Investigator interviewed N.F., who admitted to being addicted and to having gone initially to Respondent to "feed her addiction." GX 70, at 38. N.F. told the Investigator that a pharmacist had called Respondent in N.F.'s presence and told Respondent that he did not want to fill a prescription Respondent had written because he believed N.F. had a drug problem. *Id.* According to the DI's declaration, Respondent continued to prescribe for N.F. for another sixteen months after receiving the phone call and "never questioned [N.F.] about her medical history." *Id.* at 39.

N.F.'s first visit with Respondent was on November 13, 2000, after the first faxnet, which alleged that N.F. was engaged in doctor shopping. *See* GX 34, at 1; GX 35, at 1–2. N.F. told Respondent that her vehicle had been rear ended in March 2000 and that she was experiencing neck, shoulder, and back pain. GX 34, at 1. There is no indication in N.F.'s record that Respondent inquired about her substance abuse history. *See generally id.* at 1–2. N.F. complained of numbness in her left mid-thigh, muscle spasms and headaches. *Id.* at 1. Respondent performed a physical exam, which the Government's Expert concluded was adequate, and diagnosed her as having a "post acute cervical sprain and acute lumbar sprain. Postpartum." *Id.* at 2; GX 46, at 10. Respondent issued N.F. a prescription for thirty tablets of Vicodin ES with two refills, gave her samples of Skelaxin, recommended a program of physical therapy, and indicated that she would take Vioxx, which apparently had been prescribed after a knee surgery a year earlier. GX 34, at 2.

According to N.F.'s patient file, later that day, "Rachel from Albertson's * * * called regarding multiple doctors prescribing Vicodin ES for" her. *Id.* According to the note, Albertson's "will cancel the refills." *Id.*[39] Notwithstanding this phone call, four days later Respondent gave N.F. a prescription for 30 tablets of Lortab 7.5/500 mg. (1–2 q4h to take as needed but maximum of eight tablets per day), another combination drug which (like Vicodin) contains hydrocodone and acetaminophen, with two refills. *Id.* at 3. Respondent also wrote additional prescriptions for Lortab with two refills on November 28. *Id.* On December 1, however, Albertson's again called and told Respondent that N.F. wanted an early refill, which Respondent approved. *Id.*

On December 8, Respondent increased the Lortab prescription to forty tablets with two refills. *Id.* at 4. On December 22, Respondent re-issued the Lortab prescription with two refills. *Id.* at 5.

Thereafter, N.F. began a pattern of seeking early refills. On January 2, Respondent issued N.F. a prescription for forty Lortab with three refills (with the same dosing). *Id.* While the prescription and refills should have lasted until January 22, on January 16, N.F. complained that she still had severe neck pain and Respondent issued another prescription for forty Lortab 7.5/500 with three refills. *Id.* at 6. However, on January 25, nine days later, Respondent issued a new prescription (again for 40 tablets with three refills) but which increased the strength of the Lortab to 10/500.[40] *Id.*

From early on in Respondent's treatment of her, N.F. displayed a pattern of requesting early refills, which Respondent did not appear to notice as she always wrote the prescriptions as requested. For instance, on January 16, 2001, Respondent wrote a prescription for "Lortab 7.5/500 1–2 q6h PRN #40 with 3 refills," which should have lasted at least twenty days. *Id.* However, on January 25, just nine days later, when N.F. complained that the medication wasn't "strong enough," Respondent increased the dose to "Lortab 10/500 #40 with 3 refills," which should again have lasted twenty days, assuming that the dosing remained the same. *Id.*

However, N.F. returned on February 7, complaining of recent headaches and pain in both her neck and back. Respondent again issued her a prescription for "Lortab 10/500 #40 with 3 refills." *Id.* On February 16, Respondent issued N.F. another prescription for 40 tablets of Lortab 10/500 with three refills. *Id.* at 7.

On April 25, Respondent switched N.F. from Lortab to Percocet (a drug combining oxycodone and acetaminophen), and approximately two weeks later added Percodan, a drug combining oxycodone with aspirin. *Id.* at 9–10. Four days later, Respondent changed from Percodan to oxycodone 5 mg. and continued to prescribe Percocet. Respondent prescribed both drugs on several occasions. *Id.* at 11–12.

On June 11, N.F. visited Respondent. According to N.F.'s file, she had "suffered [a] burn" in her "right thoracic area," but did not "remember burning herself." *Id.* at 12. Respondent continued to prescribe oxycodone and Percocet throughout the summer months. *Id.* at 12–14. Respondent, however, stopped prescribing the Percocet in late July when N.F. complained that it made her sick. *Id.* at 15. By September 11, N.F. was taking 30

[38] Dr. Hare also noted that J.R. was being prescribed methadone because "it is inexpensive, and yet the methadone was only a small part of the patient's total opioid intake, particularly as compared to OxyContin." GX 46, at 13–14.

[39] The ALJ gave N.F.'s interview with the DI "little weight" because "[n]either N.F. nor the pharmacist testified at the hearing," and N.F. had a "history of questionable truthfulness, honesty, and completeness" and had "fail[ed] to tell the Respondent of her addiction." ALJ at 78 n.17. The ALJ also noted that "there is no evidence that the Respondent was made aware of N.F.'s addiction issues during the course of treatment." *Id.*

I credit N.F.'s interview because the patient file corroborates her story regarding the pharmacist who called Respondent and reported that she was obtaining Vicodin prescriptions from multiple doctors. GX 34, at 2. I also expressly reject the ALJ's finding that there is no evidence that Respondent was aware of N.F.'s addiction during the course of treating her as it is clear that Respondent had reason to know of N.F.'s potential addiction on the same day as the initial visit when the pharmacist told her that she was a doctor shopper. As for the ALJ's reasoning that N.F.'s statement is not credible because she "fail[ed] to tell Respondent of her addiction," one would hardly expect a person who seeks drugs to abuse them to tell a doctor the real reason she wanted the drugs.

[40] Due to the toxicity of acetaminophen, 4000 mg. is the maximum recommend daily dose. Tr. 403–04.

oxycodone tablets per day, and Respondent switched her prescription to 100 tablets of Roxicodone 30 mg. (q4h PRN). *Id.* at 17.

An entry in N.F.'s patient record for September 19, 2001, indicates that she was to move to Illinois at the end of the week and that she could not fill the Roxicodone prescription because of its cost. *Id.* at 18. On this date, Respondent wrote a prescription for 100 tablets of oxycodone 5 mg. (3–4 q4h PRN). *Id.*

Two days later, N.F. returned. N.F. told Respondent that she was not "moving until next Friday," and "would like to get Roxicodone." *Id.* Respondent issued a prescription for another 100 tablets of oxycodone 5 mg. *Id.* On September 27, however, Respondent gave N.F. a prescription for 100 tablets of Roxicodone 30 mg (1–2 q4h PRN). *Id.*

On October 2, N.F. was "back here to pick up her truck." *Id.* Respondent gave her another prescription for 100 Roxicodone 30 mg. q4h. *Id.*

A note dated October 5 indicates that "[p]atient's brother to pick up prescription for Roxicodone 30 mg q4h PRN 100." *Id.* at 18–19. Moreover, a note dated October 9 indicates that N.F.'s cousin was to pick up a similar prescription for another 30 tablets of Roxicodone 30 mg. *Id.* at 19. Another note dated October 12, again indicated that N.F.'s cousin had picked up the prescription. *Id.*

On October 15, N.F. was back in town "to testify for the state" and reported that "[s]he ha[d] moved to Joliet." *Id.* N.F. reported that she had continued pain but that she wanted to decrease her Oxycodone intake. *Id.* Respondent issued her a prescription for 200 tablets of Roxicodone 5 mg. (2–3 tabs q4h PRN) and indicated that N.F. "will see another doctor in Illinois." *Id.*

On October 17, N.F. was back to see Respondent and underwent therapy. *Id.* Notwithstanding that just two days earlier N.F. had stated that she wanted to reduce her oxycodone intake, Respondent gave her a prescription for 100 tablets of Roxicodone 15 mg., 2–3 tab q4h PRN. *Id.* The dosing instruction was thus even greater than the dosing instructions of several of the previous prescriptions Respondent had written. *Id.* Notwithstanding N.F.'s claims of having moved to Joliet, she continued to appear at Respondent's office multiple times each month through May 10, 2002, to obtain prescriptions. *See id.* at 19–33. At no point is there documentation that Respondent questioned N.F. about why she was still coming in for prescriptions if she had moved. *See id.* Instead, she authorized early refills. *See id.* at 18–19.

According to DI Llenas' Declaration, N.F. told her that "for approximately one month" she had told Respondent "that she was moving to Illinois." GX 70, at 39. During that time, individuals "pos[ing] as family members" would go to Respondent's office to obtain refill prescriptions for N.F. *Id.* N.F. did this in order "to obtain early refills, under the guise that the 'family members' needed time to mail the prescriptions to Ms. [F.] in Illinois." *Id.*

On October 17, 2001, in addition to the Roxicodone 15 mg. that N.F. was already taking ("2–3 tabs q4h PRN #100"), Respondent prescribed 30 Vicodin for "dental pain."[41] GX 34, at 19. There is, however, no evidence that Respondent referred N.F. to a dentist, who could properly diagnose the cause of her condition. Nor, given the Roxicodone that Respondent was prescribing, is it clear why N.F. would need to take Vicodin as well.

On October 19 (two days later), Respondent issued N.F. a prescription for 200 tablets of Roxicodone 15 mg. (1–2 q4h). *Id.* Moreover, on October 24 (five days later), Respondent issued N.F. a prescription for 200 tablets of Roxicodone 5 mg (3–4 tablets q4h). *Id.* On October 26 (two days later), N.F. was back again, complaining of additional symptoms including tingling and numbness, and that her right hand was turning purple. *Id.* Respondent did not conduct a neurologic or vascular exam and instead gave her another prescription for Roxicodone; the prescription was for 50 tablets 30 mg.-strength ½ tab q4h PRN. *Id.* at 20; *see also* GX 46, at 11.

On October 29 (three days later), Respondent gave N.F. another prescription for 100 tablets of Roxicodone 30 mg. q4h. GX 34, at 20. While the prescription should have lasted sixteen days, on November 1, Respondent gave N.F another prescription (to be filled the next day), for 100 tablets of Roxicodone 30 mg. q4h. *Id.* On November 5, Respondent gave N.F. a prescription for 200 tablets of Roxicodone 5 mg. (3–4 q4h), and indicated in the patient record that N.F. could not fill the prescription because the pharmacy did not have the drug. *Id.* Yet there is no indication that Respondent checked with the pharmacy or asked N.F. to return the prescription. *Id.*

While this prescription should have lasted eight days, on November 7 (two days later) Respondent issued N.F. another prescription for 100 tablets of Roxicodone 30 mg. 1–2 q4h PRN. *Id.* at 21. Five days later (on November 12), Respondent gave N.F. another prescription for 100 Roxicodone. *Id.*

On November 14, N.F., who apparently had not moved to Illinois after all—although at no point does it appear that Respondent questioned her about this—returned to Respondent and reported that she "had a motor vehicle accident at 6:30 this morning" with "increased neck pain." *Id.* Respondent noted that N.F. "has increased muscle spasm and difficulty sleeping secondary to the motor vehicle accident," which had occurred earlier that day. *Id.* Respondent gave N.F. a new prescription for 100 Roxicodone 30 mg., to be filled on November 19. *Id.*

On November 19, N.F. reported that she had lost her prescription. *Id.* Respondent noted that she had called TMC pharmacy and that the prescription had not been filled. *Id.* She also indicated that N.F.'s insurance would not cover another prescription if the prescription had already been filled. *Id.* Respondent wrote another prescription for 100 Roxicodone 30 mg. *Id.*[42]

On November 21 (two days later), N.F. needed more "medications before * * * the weekend." *Id.* Respondent noted that N.F. had "increased tenderness and muscle spasm" and gave her a prescription for 200 Roxicodone 5 mg. (5–6 tabs q4h PRN)." *Id.* at 22. On November 26, N.F. told Respondent that she had "been beaten up by her neighbors over the Thanksgiving weekend" and that "[t]hey stole her medications and her money." *Id.* Respondent further noted that N.F. "has a police report." *Id.* It is unclear, however, whether N.F. showed the report to Respondent.

Dr. Hare noted further incidents of suspicious behavior on the part of N.F. For example, on January 24, 2002, N.F. reported that she had taken her children roller skating and had "increased soreness ever since." *Id.* at 24. Respondent gave N.F. a new prescription for 100 tablets of Roxicodone and increased the dosing from 1–2 tablets every four hours to 3–4 tablets every four hours. *Id.*

Dr. Hare again found that Respondent "inadequately evaluated" the patient and that N.F.'s "condition did not warrant [c]ontrolled [s]ubstance prescriptions." GX 46, at 12. In addition, Dr. Hare opined that N.F. "was placed on excessive medication and took more than prescribed and [with] no clear

[41] Respondent also prescribed penicillin for a dental infection.

[42] As Dr. Hare noted, "this does not exclude the possibility that [N.F.] was paying for the prescriptions herself." GX 46, at 11. Moreover, N.F. could have filled the prescription at another pharmacy.

benefit"; that "[c]hanges were made and new medications added with no explanations"; that N.F. "escalated her use of medication with no clear benefit, and prescriptions were increased to accommodate her"; and that with the "medication amounts and uses patterns such as [N.F.'s], abuse and diversion of these medications ha[ve] to be suspected. " *Id.* Dr. Hare further observed that "[n]o drug screen was done to see if the patient was using these medications, or other medications not prescribed by" Respondent. *Id.*

Respondent's expert, Dr. Schneider, included N.F. as one of the patients for which there was "evidence of 'aberrant drug-related behaviors' which should have been pursued but weren't." RX K–1, at 6. As explained above, N.F.'s chart was among those that "showed problems which indicated that [Respondent] needed additional education about obtaining addiction history, careful monitoring, and review of the 'big picture.' " *Id.*

Indeed, the patient record indicates that Respondent made absolutely no attempt to monitor N.F. even though she received information as early as the day of N.F.'s first visit that she was a doctor shopper. *See* GX 34. In addition, Respondent ignored other evidence of suspicious behavior on N.F.'s part such as her continued visits even when she she had supposedly moved to Illinois, her suffering a second-degree burn but not remembering why, and her claim that her neighbors had beaten her and stolen her medications and money.[43]

C.O.

C.O. first treated with Respondent on March 5, 1999, complaining of neck and lower back pain from an industrial injury. GX 36, at 1. He was 28 years old. *Id.* His last visit with Respondent was on June 29, 2001. *Id.* at 34.

According to C.O.'s medical record, several weeks before he started treating with Respondent, C.O. had been in an industrial accident during which the brakes on a man-lift failed and the lift hit the ground hard. *Id.* at 1. C.O. went to the emergency room, where x-rays were taken of his lumbar and cervical spines, as well as his right knee; the x-rays were, however, negative. *Id.* The emergency room gave him a prescription for Vicodin. *Id.*

At the first visit, C.O. complained of severe pain in both his back and neck, with a pins-and-needles sensation in his right leg, including his foot, and a dull aching in his back. *Id.* He also complained of headaches and that his fingers were stiff and numb. *Id.* at 1–2. With respect to the initial visit, the Government's expert concluded that Respondent's physical exam was adequate but noted that she had not taken a history of his medication use and possible substance abuse. GX 46, at 12. Respondent prescribed 40 Lortab 7.5/500 with two refills and physical therapy. GX 36, at 2.

On March 10, Respondent noted that C.O. was "complaining of severe neck pain and low back pain"; the next day, she noted that he was "taking 1 ½ of the Lortab 7.5." *Id.* at 3. Respondent then gave C.O. a prescription for 40 tablets of Lortab 10/500 with two refills. *Id.*

On March 17, C.O. returned to Respondent's practice and was seen by a Family Nurse Practitioner (F.N.P.). *Id.* According to the progress note, C.O. reported that he was out of medications, needed more, and had gone through 40 Lortab in six days. *Id.* The F.N.P. further recorded that "Patient requesting pain medication refill—he has two refills left. He swears he does not. Asking him to bring in bottle." *Id.*

On March 19, C.O. returned and saw Respondent. *Id.* C.O. said that he had refilled the Lortab 7.5 two times and that he had no refills on the Lortab 10 even though the progress note for March 11 indicated that Respondent had authorized two refills. *Id.* He also said that he was taking up to 12 Lortab per day. *Id.* At this level, C.O. was exceeding by 2000 mg. the recommended maximum limit of 4000 mg. of acetaminophen per day.

On March 22, C.O. returned and complained of continued pain between his shoulder blades. *Id.* C.O. reported that he had only three Lortab 7.5 mg. remaining. *Id.* The progress note also indicates that C.O. had no refills on the Lortab 10. *Id.* Respondent performed a physical exam and found that C.O "ha[d] no obvious pain with ambulation." *Id.* at 4. She also found that he had "generalized tenderness over [his] mid thoracic area and complains of mid back pain with range of motion of the shoulders." *Id.* Respondent prescribed thirty tablets of OxyContin 20 mg. q8h (1 tablet every eight hours).

C.O. returned on March 26 (five days later), saw the F.N.P., and reported that his back pain was worse. *Id.* The F.N.P. observed that C.O.'s "speech is slightly slurred." *Id.* She also noted that C.O. had "just t[aken] two OxyContin 20 at 4 p.m. today," which was twice the dose prescribed by Respondent. *Id.* The F.N.P. physically examined Respondent and did not find anything abnormal. *Id.* The F.N.P. further noted that she would "not refill OxyContin," but would "speak with" Respondent. *Id.* The same day, Respondent gave C.O. a new prescription for 60 tablets of OxyContin 20 mg. (2q8h). *Id.* at 5. On April 2, Respondent gave C.O. an additional prescription for 60 OxyContin 20 mg. (2q8h). *Id.*

On April 9, C.O. saw the F.N.P. and complained that the "pain medication is not working anymore," that his neck, shoulder, and the base of his spine were stiff, and that his back felt tight. *Id.* He also reported that he started taking three tablets, three times a day, which was again in excess of the prescribed dose. *Id.* With the exception of the F.N.P.'s finding that C.O.'s mid-back muscles were tense and that he complained of low back pain on forward flexion, the physical exam was normal. *Id.* The F.N.P. further noted that C.O. had "used 390 pain pills in 35 days"; she further recommended that C.O. "decrease pain medication use." *Id.* at 6. Finally, the F.N.P. noted that she discussed C.O.'s treatment with Respondent and that C.O. should undergo an MRI of his cervical spine. *Id.* There is no indication in C.O.'s file that he went for this MRI. *See generally id.*

On April 12, C.O. saw Respondent and complained of continued pain in his neck and back. *Id.* He also denied "any side effects from the OxyContin" and maintained that it "allow[ed] him to work." *Id.* Respondent wrote him a new prescription for OxyContin 20 mg., increasing the number of tablets to 100 and the dosing to three tablets every eight hours. C.O. saw Respondent approximately every nine to ten days and complained of stiffness and pain; Respondent continued to issue him the same prescription until his visit of June 16. *Id.* at 7–8. At this visit, Respondent decided to lower the dosing of the OxyContin to 2qam, 3qpm, and 2qhs because three months had passed since he was injured and "he should be able to tolerate a lower dose." *Id.* at 9. At C.O.'s next visit (June 28), Respondent wrote the same prescription. *Id.*

On July 12, Respondent gave C.O. another prescription for OxyContin 20 mg. *Id.* However, she reduced the quantity to 84 tablets and the dosing to two tablets every eight hours. *Id.* Moreover, on both July 14 and July 19, C.O. reported that he had increased pain since Respondent had lowered the dose; Respondent did not, however, change the dose. *Id.* at 9–10. In the July 19 note,

[43] In her findings for NF, the ALJ also relied on Dr. Weinstein's criticism in her letter that Dr. Hare "describe[d] titration of opioid medications as dosages being 'dramatically increased,' 'aggressive,' and given in 'huge amounts,' without noting subsequent stabilization of dosages." ALJ at 78. However, Dr. Weinstein's criticism was not directed specifically at Dr. Hare's findings on N.F. While Dr. Hare did at one point write that N.F. herself increased "her use of hydrocodone (Lortab by this time) to excessive amounts," Dr. Hare did not so characterize Respondent's prescribing. GX 46, at 11.

Respondent also indicated that C.O. had undergone MRIs of both his thoracic and lumbar spines, and that each exam was negative. *Id.* at 10.

On July 26, however, C.O. complained of severe pain. Respondent gave him a new prescription for 130 tablets of OxyContin and increased the dosing to three tablets, three times a day. *Id.* at 11, 13. At the next visit (August 9), Respondent gave C.O. a new prescription for 130 tablets of OxyContin 20mg. (3 q8h). *Id.* at 14. Respondent also gave him a prescription for 30 Percocet, but did not document why. *Id.* Moreover, on August 16, C.O. reported that he was taking four tablets every eight hours. *Id.* Respondent then issued a prescription for 100 tablets and increased the dosing to four tablets every eight hours. *Id.* Respondent also wrote another prescription for 30 Percocet. *Id.* The progress note contains no indication, however, as to whether she asked C.O. about how he was using the Percocet.

On August 23, Respondent gave C.O. a new prescription which increased the strength of the OxyContin to 40 mg., but which reduced the dosing to two tablets every eight hours. *Id.* At C.O.'s next visit (September 1), he again reported that he had increased his dosing from two tablets to three tablets every eight hours; C.O. claimed that three tablets relieved his pain but that two tablets did not. *Id.* Respondent performed a physical exam and noted that C.O. had chronic neck and mid back pain, that he had less lower back pain, and a continued muscle spasm. *Id.* Respondent gave C.O. a prescription for 70 tablets of OxyContin and increased the dosing to three tablets every eight hours; she also gave him a prescription for 60 Percocet. *Id.*

Respondent continued to prescribe OxyContin 40 mg. (3 q8h) until October 22, when she decided to discontinue the drug and instead prescribed 200 tablets of MS Contin 60 mg. (3 q8h). *Id.* at 17. No explanation for the change was given. *See id.* At C.O.'s next visit (which was on October 29), Respondent was back to prescribing OxyContin 40 mg., and gave him a prescription for 200 tablets (3 q8h). *Id.* The October 29 entry does not indicate why Respondent changed back to OxyContin. *Id.*

On November 19, C.O. saw Respondent and reported that the MS Contin did not help with the pain, that he was taking nine tablets a day, and that the pain was "getting worse." *Id.* Respondent performed a physical exam and concluded that C.O. still had neck and back pain secondary to the February accident. *Id.* at 18. Respondent gave him prescriptions for 225 tablets of OxyContin 40, with a dosing of ten tablets per day (3 qam, 4 qpm, 3 qhs).

On December 10, C.O. again saw Respondent and complained of various pains. In the note, Respondent indicated that C.O. "would like to increase the OxyContin to 4 tabs q8h." *Id.* Respondent performed a physical exam which "show[ed] no obvious pain with ambulation, but he complains of pain." Respondent also found that CO "has tenderness over bilateral cervical paraspinals, bilateral thoracic muscles and bilateral lumbar paraspinals" and "has hypertonicity of spinal muscles." *Id.* Respondent concluded that C.O. had chronic neck, mid-back and lower-back pain" and gave him a new prescription for 252 tablets of OxyContin 40 mg. and increased the dosing to four tablets every eight hours. *Id.* at 19. She also gave him a prescription for 50 tablets of Lortab 10/500 (q6h PRN) for breakthrough pain with two refills. *Id.*

On December 27, C.O. again saw Respondent. While the note for the visit indicated that C.O. "ha[d] been sick with the flu," it did not document that C.O. complained of any pain. *Id.* at 19. Moreover, Respondent performed a physical exam which found that he had "generalized tenderness over bilateral thoracic and lumbar paraspinals." *Id.* C.O., however, "ha[d] no pain with ambulation" and had a "full range of motion of both upper and lower extremities." *Id.* Respondent again concluded that C.O. had "chronic neck pain, mid back pain and low pack pain," and gave him prescriptions for 252 tablets of OxyContin 40 mg. (4 q8h), 50 Lortab 10/500 (q6h PRN) with two refills, and 50 Percocet 10/650. *Id.*

On January 21, Respondent again saw C.O. and stated that "this dose of 160 mg." every eight hours worked and that while he had some stiffness, he was able to "handle the pain as long as he takes the OxyContin." *Id.* He also "denie[d] any mental changes or ever feeling euphoria from the medications." *Id.* Following a physical exam in which she noted that he had general tenderness over his cervical, thoracic and lumbar paraspinals, normal ambulation without pain, and pain with both the cervical and lumbar range of motion, Respondent reissued the three previous prescriptions for 252 OxyContin 40 mg., 50 Percocet 10/650, and 50 Lortab 10/500 with two refills. *Id.*

Three days later, Respondent noted that C.O.'s insurance had "denied coverage for any medications" and that he had undergone "an independent medical examination by [another physician] in early December." *Id.* at 21. Respondent indicated that C.O. had been unable to fill the OxyContin prescription "because of the cost" and wrote him a new prescription for 50 tablets. *Id.* The note does not indicate, however, what happened to the original prescription or whether C.O. had partially filled it. *Id.*

Respondent continued to treat C.O. through June 29, 2001, and generally prescribed the same drugs (OxyContin 40 mg., Lortab 10/500,[44] Percocet 5/325 [45]) with the same dosing as before. *See generally* GX 36. According to the record, at the September 8, 2000 visit, C.O. reported that he had obtained a job on a cruise ship. *Id.* at 28.

At C.O.'s next visit (October 10), he reported having injured his back and neck on the ship. *Id.* at 28. Respondent's physical exam "show[ed] no obvious pain with ambulation" and found "minimal tenderness over lower cervical paraspinal and over lumbar paraspinals." *Id.* at 29. Respondent also did a neurological exam of his upper and lower extremities; the exams were normal. *Id.* Respondent then issued four prescriptions for OxyContin 40 mg. (each dosing at four tablets every eight hours); the quantities were for 168 on two of the scripts, with 84 and 80 on the remaining two. *Id.* She also gave C.O. a prescription for 350 Lortab 10/500 (q4h PRN) with no refills. *Id.*

On October 31, C.O. returned to Respondent and told her that he would be going on a ship "in a few days and be gone for almost 13 weeks." *Id.* C.O. also told Respondent that he had not filled the two prescriptions for 168 OxyContin. *Id.* She performed a physical exam which found that C.O. had slight stiffness with ambulation and with lumbar range of motion. *Id.* She also found tenderness over his cervical, thoracic and lumbar paraspinals. *Id.* Respondent gave him a prescription for 60 OxyContin 40mg (4 q8h), and 360 Lortab 10/500 (q4h PRN) with three refills. *Id.* Moreover, on November 3, Respondent gave C.O. a prescription for another 60 OxyContin 40 mg. *Id.* at 30.

Five days later (on November 8), C.O. had still not gone on the ship. *Id.* C.O. told Respondent that he still had neck and back pain and that he would "be on the ship until January 22, 2000." *Id.* Respondent performed a physical exam in which she found "minimal tenderness over [his] cervical, thoracic and lumbar spine." *Id.* Respondent issued him four prescriptions for OxyContin 40 mg (4 q8h); the quantities

[44] Respondent also prescribed Percocet along with Lortab.

[45] Respondent last prescribed Percocet on June 19, 2000. GX 36, at 26. On several occasions (including January 21, February 9, March 3, March 29, and May 1, 2000), Respondent prescribed both Lortab with three refills, and Percocet. *Id.* at 20–26.

were 372, 280, 144 and 92 tablets. *Id.* Respondent also gave him a prescription for 350 Lortab 10/500 with no refills. *Id.*

On December 22, C.O. returned to Respondent seeking another prescription for OxyContin. *Id.* According to the note, C.O. "ran out of medications this Sunday" and claimed "that he tore up the prescriptions." *Id.* Respondent noted that C.O. "show[ed] very slurred speech," and concluded that "he probably took excess Soma." *Id.* She referred him to the "emergency room or for drug testing." *Id.*

Notwithstanding that C.O. had previously told Respondent that he would be working on a cruise ship until late January, there is no indication that Respondent questioned him as to why he was back so soon. *Id.* Indeed, according to a pharmacy profile which listed prescriptions C.O. had filled at Tucson area pharmacies, he had filled prescriptions for controlled substances on November 21, 22, and 27, as well as December 6, 21, and 22, 2000. GX 37, at 2.

On December 27, C.O. returned to Respondent seeking more OxyContin. GX 36, at 30. Respondent decided to taper C.O. down on the OxyContin to three tablets every twelve hours (for a total of 240 mg. of oxycodone) and wrote him prescriptions for sixteen and eight tablets.[46] *Id.* at 31. Respondent issued additional prescriptions for OxyContin 40 mg. in smaller quantities with the same dosing instruction on January 3, 8, 15 and 22; at the January 15 visit, Respondent also gave him a prescription for 100 Lortab 10/500 with two refills. *Id.*

On February 5, 2001, C.O. complained that he could not afford OxyContin and would like more Lortab and Soma. *Id.* Respondent told C.O. that there was a daily maximum dose of acetaminophen, which is used in Lortab. *Id.* Instead, Respondent prescribed 200 tablets of Roxicodone 5 mg. (5–6 q3h PRN). *Id.* Based on this prescription, C.O. would have taken a maximum of 240 mg. of oxycodone per day.

On February 14, Respondent gave him a prescription for 100 tablets of Roxicodone 30 mg., but the dosing instructions were not, however, recorded in C.O.'s record. *Id.* Respondent also gave C.O. a prescription for 100 Lortab 10/500 with five refills; this prescription thus authorized the dispensing of 600 tablets. *Id.* Based on the maximum daily recommended safe dose of acetaminophen of 4000 mgs., the Lortab should have lasted seventy-five days.

By February 20, however, Respondent was prescribing two tablets of Roxicodone 30 mg. every 3 hours, for a total dosage of 480 mg. of oxycodone a day; this was the same daily amount of oxycodone as Respondent had been dosing on December 22.[47] *Id.* There is no indication in the February 20 note that C.O. had complained of worse pain or that Respondent had examined him. *Id.*

Respondent issued additional prescriptions for Roxicodone 30 mg. on March 9 (50 tablets) and 13 (three 50-tablet prescriptions), although she reduced the dosing to one to two tablets every four hours for a maximum daily dose of 360 mg. of oxycodone. *Id.* On March 27, Respondent gave C.O. not only a prescription for 50 Roxicodone 30 mg., but also for 100 Lortab 10/500 with five refills, even though the previous Lortab prescription (Feb. 14) with refills should have lasted seventy-five days or until late April. *Id.* There is no indication in the March 27 note that Respondent even recognized this.

Respondent issued additional Roxicodone prescriptions and by April 17, was back to prescribing 480 mg. of oxycodone a day. *Id.* On April 27, C.O. was again out of Lortab even though the March 27 prescription with refills should have lasted well into June. *Id.* at 33. Respondent noted that she told him that he could not take more than eight Lortab a day and that there would be "no more acetaminophen containing medications at least for now." *Id.* Respondent, however, gave C.O. a new prescription for 100 tablets of Roxicodone 30 mg., 1–2 tablets every three hours. *Id.*

Respondent continued to prescribe Roxicodone to C.O. and noted on May 11, that he was taking "approximately 16 Roxicodone per day." *Id.* Between May 11 and June 29, Respondent issued eight prescriptions for 100 Roxicodone 30 mg. *Id.* at 33–34. Moreover, on June 8, Respondent indicated that she was "discontinu[ing] Lortab and start[ing] Norco10/325 1–2 q4h PRN # 100 with five refills, maximum twelve per day." *Id.* at 34. This was an even greater dose of hydrocodone than before, and yet the note for June 8 contains no medical reason for issuing the prescription. *Id.*

Respondent issued additional prescriptions for 100 tablets of Roxicodone on June 18, 25 and 29. *Id.* On July 3, C.O. entered drug rehab. *Id.*

Following this entry Respondent wrote a two-page plus narrative of how she had treated C.O. *Id.* at 35–37. Therein, she maintained that she had closely "watch[ed] his intake of Lortab" because of "the danger" associated with taking too much acetaminophen.[48] *Id.* at 36. Respondent also wrote:

> If [C.O.] did in fact become "addicted" to either Roxicodone or Soma, it was not because I neglected to try to avoid that. He had a true injury, he was truly in pain and he truly required the medication to function. In rare instances, patients become "addicted" to medications that were prescribed appropriately. I do not know if this is the case with [C.O.], since I have had not follow up information on him since June 2001.
>
> [C.O.] suffered no harm or injury as a result of the medications.[49]

Id. at 37.

With respect to C.O., Dr. Hare concluded that Respondent's evaluation was inadequate "to justify prescribing [c]ontrolled [s]ubstances," and that while Respondent had developed "an acceptable treatment plan in 07/99 * * * to wean the patient from medications, * * * the medications were continued and increased." GX 46, at 13. Dr. Hare further noted that Respondent "exerted little control over the prescriptions," that "[t]he patient self-escalated drug doses, and then [Respondent] increased the prescription to match his use." *Id.* Moreover, "[t]here were no consequences for excessive medication over-use, and dangerous amounts were prescribed in general, and toxic doses of acetaminophen were prescribed on several occasions." *Id.* Finally, Dr. Hare opined that "[t]here seemed to be no plan; he was changed from medication to medication, strength to strength, dose to dose with no pattern or explanations." *Id.*

In her report, Dr. Schneider likewise concluded that C.O.'s chart "had evidence of aberrant drug-related behaviors which should have been pursued but weren't." RX K–1, at 6 (int. quotations omitted). Dr. Schneider further noted that C.O. had "received early refills without adequate documentation and explanation," and

[46] There is no indication as to whether Respondent followed up to determine whether C.O. went to the emergency room or for the drug test.

[47] On February 20, Respondent gave CO three 50-tablet prescriptions for Roxicodone 30 mg. GX 36, at 32.

[48] Respondent observed that she "would not allow his daily dose of acetaminophen to go above 4000 mg." GX 36, at 36. *Id.*

[49] In describing her treatment of C.O., Respondent maintained that it was C.O.'s overuse of Soma which caused him "to have slurred speech on 2 occasions." GX 36, at 36. The first of these incidents was on March 26, 1999, when C.O. told the F.N.P. that he had taken double the dose of OxyContin that was prescribed. *Id.* at 4. Moreover, in the progress notes for this visit, there is no indication that C.O. was either asked about his Soma use or stated that how many tablets he had taken. *Id.* at 4–5. Moreover, while Respondent indicated in the note the second incident of slurred speech that "he probably took excess Soma," Respondent did not follow through as to whether C.O. had undergone drug testing. *Id.* at 30.

that his chart "indicated that [Respondent] needed additional education about obtaining an addiction history, careful monitoring, and review of the big picture." *Id.* (int. quotations omitted).

N.S.

On February 20, 2001, N.S., an eighteen-year-old college student, first presented at Respondent's practice. GX 57, at 1. N.S. complained of lower back pain, "especially since going to [the] University of Arizona," and rated his pain level as "4" on a scale of 0 to 10. GX 57, at 1 & 5. N.S. denied that the "pain radiat[ed] to both lower extremities," "denie[d] numbness and tingling or weakness of both lower extremities," and denied "bowel and bladder problems." *Id.* at 1. N.S. "complain[ed] of problems with getting comfortable" and of pain with sitting. *Id.*

Respondent performed a physical exam. She found that N.S. "has normal ambulation without pain," that he was "able to walk on heels and on toes without pain and hop on either foot without pain." *Id.* Moreover, the "straight leg raising test was negative bilaterally," and N.S. had "no pain with bringing heel to buttocks bilaterally." *Id.* N.S. did, however, have "minimal low back pain with lumbar flexion." *Id.* Finally, Respondent performed a neurological exam of N.S.'s lower extremities and found that he had "normal motor strength, sensation and deep tendon reflexes." *Id.*

Respondent diagnosed that N.S. had a "history of episodes of low back pain," with a "[r]ecent increase in low back pain secondary to poor mattress and poor positioning." *Id.* She recommended a treatment plan of joint mobilization and physiotherapy; she also prescribed 30 tablets of OxyContin 20 mg., one tablet to be taken every twelve hours. *Id.* at 2.

Two days later, N.S. complained that the OxyContin was not working. *Id.* He also told Respondent that he had "doubl[ed] up on [the] dose, but [that] didn't work either." *Id.* Respondent then told him to try three tablets at a time. *Id.*

Four days later, N.S. complained that he still had low back pain and now claimed that his pain level was a six. *Id.* at 2 & 5. He also stated that the "OxyContin helps if he takes 60 mg. and [that] he would like something for breakthrough pain." *Id.* at 2. Respondent then gave him a prescription for 180 tablets of OxyContin 20 mg., with three tablets to be taken every twelve hours, as well as a prescription for 50 tablets of oxycodone 5 mg., one tablet to be taken every four hours as needed. *Id.*

On March 6, N.S. reported that the OxyContin [50] and physical therapy (including joint mobilization) were helping his pain and that his pain level was a four. *Id.* at 3 & 5. Respondent performed a physical exam which found that "[h]e has slight stiffness with lumbar range of motion." *Id.* at 3. She also found that "[h]e has tenderness and hypertonicity over bilateral lumbar paraspinals, but improvement in lumbar range of motion." *Id.* As her impression, Respondent again indicated: "history of episodes of low back pain. Recent increase in low back pain secondary to poor mattress and poor positioning." *Id.* For N.S.'s treatment plan, Respondent recommended that he continue the physiotherapy and joint mobilization. *Id.* She also recommended that he continue taking the OxyContin (the previous prescription was for a thirty-day supply). *Id.* She also gave him a prescription for 50 tablets of Roxicodone. *Id.* However, she increased the strength of the Roxicodone from five to fifteen mg., and the dosing from one tablet every four hours to one tablet every three hours. *Id.*

The last entry in N.S.'s medical record is dated March 19, 2001, and reports that N.S.'s father called and said that NS "was too sedated at home and obviously took too many." *Id.* at 3. The father also reported that N.S. "has history of depression." *Id.*

In an interview with a DEA Investigator, N.S. admitted that he had gone to Respondent "in order to obtain OxyContin prescriptions." GX 70, at 39. N.S. also told the Investigator that "[h]is primary purpose was drug seeking," and that "his back pain was only secondary." *Id.*

N.S.'s father confirmed to the DI that he had called Respondent and expressed his concern about his son's being overly medicated and having "nod[ded] out in a conversation." *Id.* at 39. According to N.S.'s father, Respondent stated that because his son "was of legal age, he could make his own decisions [and] that she had every right to prescribe whatever medications she deemed necessary." *Id.* at 39–40. Thereafter, N.S.'s father persuaded him to stop seeing Respondent. *Id.* at 40.

Dr. Hare concluded that Respondent had "reasonably evaluated" N.S. GX 46, at 15. He also concluded the plan of care was reasonable "with the exception of the medication [she] prescribed." *Id.* According to Dr. Hare, "[b]ased on [her] findings, there seemed to be no indication for opioids, and certainly not * * * in the aggressive doses she prescribed." *Id.*

Dr. Hare also noted that while N.S. "had denied taking previous medications[,]" he "rapidly self-escalated the medications to a large amount." *Id.* Dr. Hare further explained that "[i]n a patient not tolerant to opioid, this dose of OxyContin, coupled with the minimal findings for a pain problem, would not be well tolerated and could have fatal consequences. The fact that the patient tolerated these large doses * * * indicated that he was not opioid-naïve, or he was not taking the medication." *Id.*

Finally, Dr. Hare observed that N.S.'s "minimal response to a rather large initial dose would raise serious questions about opioid responsiveness of the pain problem." *Id.* Continuing, Dr. Hare explained that N.S.'s "insistence on escalating the dose would indicate an effect sought for mood or a medication-abuse situation." *Id.*

In her testimony, Respondent acknowledged that N.S.'s father had called her and expressed his concern that his son was taking excessive medication. Tr. 2173. Respondent did not respond to any of Dr. Hare's observations regarding the medical appropriateness of her prescribing OxyContin to N.S. *Id.* at 2172–73.

F.L. and B.L.

F.L. and B.L. were father and son. The records in evidence document Respondent's treatment of F.L. between August 16, 1999 and March 30, 2001, shortly before his death on April 17 due to complications from diabetes. *See* GX 49. The record does not, however, reflect when F.L. began seeing Respondent. *See id.* at 1.

In addition to having diabetes, F.L. was a recovering alcoholic. Tr. 2123. He had chronic pancreatitis and a lumbar spine condition; his diabetes had led to a below-the-knee amputation of one of his legs. *Id.* Respondent treated F.L. with a variety of drugs including large doses of OxyContin and Oxy IR. For example, on August 16, 1999, Respondent gave F.L. prescriptions for: (1) 1200 tablets of OxyContin 40 mg., twenty tablets to be taken every twelve hours; (2) 4080 tablets of Oxy IR, with seventeen tablets to be taken every three hours; (3) 140 Percocet; and (4) 200 Percodan. GX 49, at 1. On both February 21 and March 30, 2001, Respondent gave F.L. prescriptions for: (1) 1320 tablets of OxyContin 40 mg., with 22 tablets to be taken every twelve hours; (2) 4800 tablets of Oxycodone IR, with twenty tablets to be taken every three hours; (3) 280 Percocet, and (4) 400 Percodan. *Id* at 15. The note for March

[50] On March 2, N.S. complained that the OxyContin was causing "slight nausea." GX 57, at 2.

30 indicated that the script for 4800 tablets of Oxycodone IR was to be filled through the "PAP program";[51] the note also indicates that Respondent gave F.L. an additional prescription for 500 tablets of this drug "to fill locally" and an additional prescription for 280 Percocet.[52] *Id.* The prescriptions Respondent issued to F.L. totaled approximately 7,000 dosage units a month.[53]

In October 2000, Respondent also commenced to treat B.L. (F.L.'s son) in October 2000 for Attention Deficit Disorder and an eating disorder. GX 50, at 1–2. Respondent prescribed several controlled substances including Ritalin and Dexedrine (both stimulants) to him. *Id.* at 1–2.

On April 23, 2001 (six days after F.L.'s death), B.L. visited Respondent. *Id.* at 4. During the visit, Respondent gave B.L. a prescription for 200 tablets of Dexedrine 10 mg. *Id.* at 4–5. In her testimony, Respondent maintained that she had questioned B.L. as to what had happened to the last shipment of OxyContin from the PAP to his father. Tr. 2126. (In her testimony, Respondent did not address whether she questioned B.L. regarding the other PAP prescription—for 4800 tablets of Oxycodone IR). According to Respondent's testimony, B.L. "didn't really answer [her], and [she] didn't know." Tr. 2126. Continuing, she added that ""I never got an answer from him what [as to] what happened," and in any case, "I didn't know when that last shipment came," and did not "know how to contact" the company (Purdue Frederick).[54] *Id.* Several months later, B.L. was hospitalized for drug addiction or dependence. GX 50, at 5.

In her plea agreement, Respondent admitted that during B.L.'s April 23 office visit, she had prescribed to him 200 tablets of Dexedrine 10 mg. and that after B.L. "informed [her] that he had accepted delivery of a prescription for his recently deceased father, FL, another patient of [hers,] in order to possess the prescribed controlled substance * * * OxyContin 40 mg." GX 6A, at 7. Moreover, in the agreement, Respondent admitted that she "upon learning this information from * * * B.L., [she] did knowingly * * * fail to rescind the prescriptions for Dexedrine for B.L."[55]

Respondent did not document her discussion with B.L. regarding his father's OxyContin in his medical record. GX 50, at 4–5; Tr. 2360. While Respondent admitted that this was a shortcoming, she claimed she did not document the "diversion" because she lacked information to conclude that a diversion had taken place. Tr. 2359–60. I find, however, that Respondent's admission as part of the plea agreement precludes the relitigation of the issue of whether she knew that B.L. had obtained the OxyContin tablets dispensed pursuant to his father's prescription.[56]

W.O. and J.O.

W.O. and J.O. were husband and wife. Respondent began treating W.O. in September 2000 for neck and low back pain from two motor vehicle accidents, one in June 2000 and the second in August 2000. GX 53, at 1. She began treating J.O. in October 2000 for neck and low back pain from a motor vehicle accident of September 2000. GX 51, at 1. At the initial visit of each, Respondent prescribed Percocet. GX 51, at 2; GX 53, at 2. Respondent also prescribed OxyContin and Soma to both J.O. and W.O. at numerous visits.[57]

On November 13, 2000, J.O. saw Respondent and reported that their house had been burgled and that all of her and W.O.'s medications had been stolen. GX 51, at 4. J.O., however, brought a police report with her. *Id.* Respondent wrote a replacement prescription for 60 tablets of OxyContin 40 mg., with one tablet to be taken every eight hours.[58] *Id.* While this prescription should have lasted twenty days, only four days later, Respondent gave J.O. another prescription for 21 tablets of OxyContin 40 mg, as well as 60 tablets of Oxycodone IR (1–2 tablets every four hours for breakthrough pain). *Id.* Moreover, on November 21, after only four more days, Respondent gave J.O. a prescription for another 100 tablets of OxyContin 40 mg., with the same dosing of one tablet every eight hours. This was followed by additional prescriptions for OxyContin 40 mg. December 20 (100 tablets); December 29 (50 tablets), January 12 (100 tablets of OxyContin 80 mg.). *Id.* at 5. Throughout the next four months, Respondent prescribed to J.O. OxyContin and either Oxycodone IR, Percocet, or Oxycodone.[59]

On November 13, 2000, Respondent also saw W.O., performed a physical exam on him, and gave him a prescription for 100 tablets of Percocet. GX 53, at 5. Later that day, she wrote a replacement prescription for 100 Percocet in W.O.'s name, (which she apparently gave to J.O.) based on J.O.'s report that their medications had been stolen. *Id.* There is no indication, however, that Respondent asked J.O. about what time the robbery had

[51] While the note for F.L.'s last visit does not indicate that prescription for 1320 tablets of OxyContin was to be filled through the PAP program, an earlier note indicated that F.L. was "on [the] PAP program for the OxyContin and Oxycodone IR." GX 49, at 3. I therefore find that the oxycodone prescription was also to be filled by PAP.

[52] The Government's Expert did not discuss Respondent's prescribing to F.L. in either of his reports, *see* GX 46 & 46A. Nor did he testify regarding Respondent's prescribing to him. *See generally* Tr. 144–229.

[53] F.L.'s patient record is devoid of any evidence that Respondent subjected him to pill counts or drug screens, even though on several occasions he stated that he had lost medications or prescriptions. *See generally* GX 49.

[54] Several months earlier, however, Respondent had contacted the same PAP (Purdue Frederick) with respect to another patient J.R., after his application was denied. *See* GX 24, at 22–24. As the record indicates, Respondent knew the phone numbers.

[55] In the plea agreement, Respondent agreed that these "facts accurately describe my conduct in connection with the offenses to which I am pleading guilty." GX 6A, at 6.

The incident involving B.L. was the second of the four counts of Accessory After the Fact to Possession of Controlled Substances by Misrepresentation, Fraud, Forgery, Deception or Subterfuge" to which Respondent pled guilty. *See* GX 6A (Plea Agreement; citing 18 U.S.C. 3 & 21 U.S.C. 843(a)(3)).

[56] The medical record does show, however, that Respondent did not prescribe any more controlled substances to B.L. after the April 23 visit.

[57] Respondent prescribed OxyContin 20 mg. to J.O. at her initial visit, GX 51, at 2; she started prescribing OxyContin 40 mg. to both J.O. and W.O. a week after their first visits. GX 51, at 1–2; GX 53, at 1–3. In early November, Respondent increased the dosing of the OxyContin from one tablet every twelve hours to one tablet every eight hours for both J.O. and W.O. without providing any explanation in their medical records as to why doing so was medically necessary. *See* GX 51, at 2 & 4; GX 53, at 4–5.

[58] Respondent also issued to W.O. prescriptions for Percocet, oxycodone 5 mg. and Oxyfast 20 mg./ml., and Roxicodone 30 mg. at various visits. After being on Roxicodone for several months, W.O. complained that it was expensive, and Respondent started prescribing methadone. GX 53, at 17. On September 21, W.O. also complained about the cost of Dilaudid; Respondent discontinued prescribing the drug and increased the methadone. *Id.* at 19. However, on November 1 and 14, she again prescribed Dilaudid, only to stop prescribing the drug at the November 26 visit. *Id.* at 20. However, while Respondent had increased the dosing of methadone when she initially discontinued the Dilaudid, *id.* at 19; she did not decrease the methadone dosing when she resumed prescribing the Dilaudid. *Id.* at 20.

As for Percocet, on October 3, Respondent issued W.O. a prescription for 300 Percocet "to fill October 20." *Id.* Yet on October 19, she issued W.O. another prescription for 300 Percocet. *Id.* at 19–20. The file contains no explanation as to why the latter prescription was needed.

[59] Here again there were frequent instances in which Respondent issued new prescriptions when J.O. should have had ample medication remaining from previous prescriptions. For example, on March 9, 2001, Respondent gave J.O. a prescription for 200 tablets of Roxicodone 30 mg., with one tablet to be taken every three hours. GX 51, at 14. While this prescription should have lasted twenty-five days, on March 21 (only twelve days later), Respondent gave J.O. a prescription for another 100 tablets with the same dosing. *Id.* at 15. And while these two prescriptions should have lasted until approximately April 15, Respondent gave her another prescription for 100 tablets on April 3. *Id.* at 16.

occurred and whether W.O. had even had time to fill the first prescription she wrote on that day.

Thereafter, on November 17, Respondent gave W.O. a prescription for 21 tablets of OxyContin 40 mg (q8h—a week's supply), and 60 tablets of oxycodone (1–2 q4h). *Id.* Respondent wrote W.O. additional prescriptions for 100 tablets of OxyContin 40 (q8h—a thirty-three day supply) on November 20, as well as on December 8 and December 15. *Id.* at 7. On January 8, 2001, she doubled the dosing and gave him a prescription for 100 tablets of OxyContin 80 (q8h). *Id.* at 9. On January 18, she issued another prescription for 100 tablets of OxyContin 40 and doubled the dose to two tablets every eight hours; yet, on January 31, the dosing of the prescription was back to one table of OxyContin 40 every eight hours. *Id.* at 11. Moreover, on February 12, while W.O.'s low back pain was then a "zero,' she gave him another prescription for 100 tablets of OxyContin 40 and increased the dosing back to two tablets every eight hours. *Id.* at 13.

On May 14, 2001, Respondent switched W.O. from OxyContin to Dilaudid because of the former's cost, GX 53, at 17; on May 18, 2001, she did the same for J.O. GX 51, at 17. At their respective visits, Respondent wrote W.O. prescriptions for Dilaudid 8 mg. "2 tabs QID # 100" and 300 Percocet; she wrote J.O. prescriptions for Dilaudid 4 mg. "4 tabs QID #200," as well as for 100 Roxicodone (1–2 q3h) and 200 Percocet. GX 53, at 17; GX 51, at 17. Moreover, on June 25 and 26, Respondent started prescribing methadone 10 mg, with four tablets to be taken four times a day, to both J.O. and W.O.[60] GX 51, at 18; GX 53, at 17.

On November 9, Respondent wrote J.O. a prescription for 200 Percocet q4h PRN, which was to be filled on November 14 (along with prescriptions for Dilaudid and Methadone). GX 51, at 20. However, on November 15, 2001, W.O. (J.O.'s husband) came to Respondent's office to pick up a replacement prescription for the November 9 prescription, which had been altered. *Id.* W.O. "insist[ed that the] prescription was ripped in his pocket even though the other 2 prescriptions were unripped." *Id.* Respondent had the pharmacy mail the prescription to her and found that the "fill date of November 14 was obviously torn out." *Id.* Respondent did not write a replacement prescription. *Id.*

On November 21, J.O. went back to Respondent and asked for a replacement prescription for the Percocet. *Id.* Respondent "explained "the modification of prescription and that it was illegal." *Id.* J.O. claimed that she knew nothing about the modification of the prescription and that it was W.O. who had picked it up and dropped it off at the pharmacy. *Id.*

The notation for this visit also states that Respondent had "received anonymous call that [J.O.] selling Percocet." *Id.* Respondent told J.O. that she "would not and could not" write controlled substance prescriptions for her anymore. *Id.* at 21. Respondent placed J.O. on a tapering schedule for methadone and did not prescribe other controlled substances thereafter. *Id.* However, at J.O.'s very next visit, December 3, 2001, J.O. "had more pain on the Methadone only." *Id.* Respondent then abandoned the plan to taper J.O. off the methadone and increased her dose. *Id.*

On March 4, 2002, J.O. brought to Respondent a consent agreement she had entered into with the State Nursing Board. *Id.* at 22. Apparently, the Nursing Board had initiated a disciplinary proceeding against J.O. because she had abused medications and taken some from a nursing home at which she worked. *Id.* Under the Consent Agreement, J.O. needed to have Respondent "notify the nursing board about what medications she is on." *Id.* At the visit Respondent gave J.O. a prescription for 600 methadone 10 mg. *Id.* at 22.

On March 12, J.O. appeared "need[ing] half of [the] methadone prescription because she gave [W.O] half of them."[61] *Id.* Respondent obliged and issued her a prescription for 300 tablets of methadone. *Id.* Respondent further noted that that she and J.O. had "discussed problems with [W.O.], but [Respondent] didn't tell her what he did." *Id.* According to W.O.'s patient file, on February 27, 2002, Respondent had received a phone call from G.A. stating that W.O. had stolen approximately 100 OxyContin tablets from him. GX 53, at 21.

On April 16, Respondent wrote a letter to the Arizona State Board of Nursing, listing J.O.'s medications. GX 51, at 24. Notwithstanding the report she had previously received that J.O. was selling her medication, the incident with the torn prescription, and J.O.'s having admitted to giving half of a methadone prescription to W.O., Respondent wrote that she was "aware of [the] history of this nurse's diversion of drugs in the past, but there is no evidence of continuation of this behavior." *Id.*[62]

With respect to her prescribing to W.O. and J.O., Respondent testified that after receiving the phone call which reported that J.O. was selling Percocet, she stopped prescribing the drug to her and prescribed methadone to her, which she maintained has a low risk of abuse and diversion, Tr. 2162, notwithstanding its inclusion on schedule II, which indicates that it "has a high potential for abuse." 21 U.S.C. 812(b)(2)(A). She also maintained that she had stopped treating W.O. after she received the phone call from G.A. Tr. 2162. While Respondent testified that J.O. had told her she was going to get a divorce, *id.,* J.O.'s file indicates that she had given half of her methadone to W.O. after she told Respondent that she had left him. GX 51, at 22. Moreover, Respondent did not explain why she subsequently wrote the Nursing Board that there was no evidence that J.O. was continuing to divert drugs. *See* Tr. 2160–63.

There is likewise no evidence that Respondent attempted to monitor J.O. through such measures as pill counts and drug screens after receiving the report that she was selling her controlled substances. Moreover, the medical record contains no documentation that Respondent counseled J.O. as to the illegality of her giving her methadone to W.O.

M.H., P.H., and A.B.

P.H. started seeing Respondent in January 1999 for low back pain, which she had suffered for six years after her "dog knocked her off the couch while she was sleeping." GX 55, at 1. A.B., who lived with P.H., first saw Respondent on November 27, 2000, complaining of right leg pain. *See* GX 56, at 1; Tr. 2129. M.H., the mother of P.H., initially treated with Respondent in July 2001, suffering left thoracic pain at the time. GX 54, at 1; Tr. 2129. M.H. had undergone lumbar surgery in 1989. GX 54, at 1.

Respondent initially treated P.H. with Percocet and a non-controlled muscle relaxant (first Skelaxin, then Flexeril, and then Robaxin), as well as physical therapy. GX 55, at 2 & 5. On April 7, 1999, P.H. saw Respondent and told her

[60] On July 17, Respondent doubled J.O.'s dose of methadone to eight tablets, four times a day. GX 51, at 18. There is, however, no indication in J.O.'s patient file explaining the basis for doing so. *See id.*

[61] On February 25, W.O. had picked up a prescription for 600 tablets of Methadone. GX 53, at 21. W.O. did not return to Respondent's office after that.

[62] This was the fourth count of diversion in the plea agreement, which Respondent failed to report to law enforcement authorities. *See* GX 6A, at 8.

that "her Percocet was stolen approximately 2 weeks ago, and [that] she has only had Darvocet N100 to take for the past 2 weeks." *Id.* at 4. While Respondent had not prescribed Darvocet (a schedule IV controlled substance, *see* 21 CFR 1308.14) to P.H., there is no indication that Respondent asked P.H. from whom she had obtained this drug. *Id.* at 7–8.

Throughout the first six months that Respondent treated P.H., she prescribed Percocet and muscle relaxants. *See id.* at 1–6. On September 1, 1999, Respondent noted that "[t]he OxyContin 10 # 60 made her nauseated." *Id.* at 6. P.H.'s record contains no indication as to what date she prescribed OxyContin to her. *Id.* At this visit, Respondent wrote P.H. another OxyContin prescription as well as a prescription for 250 Percocet. *Id.* at 7.

On May 12, 2000, a pharmacist called Respondent and told her that two days earlier P.H. had filled a prescription for 42 Percocet which had been issued by Dr. K., her primary care physician *Id.* at 11. While at P.H.'s next visit (June 12), Respondent questioned her about the incident,[63] on or about October 10, Respondent received another call from a pharmacy which reported that every two weeks, P.H. was obtaining 84 Vicodin tablets from Dr. K. *Id.* at 13.

Once again, there is no indication that Respondent contacted Dr. K. to coordinate their prescribing. Moreover, on October 10, Respondent changed the prescription from 250 tablets of Percocet to 90 tablets of OxyContin 20 mg., one tablet to be taken every eight hours.[64] *Id.* at 13.

P.H. returned nine days later and Respondent noted that she had "severe tenderness over [her] lumbar muscle area." *Id.* at 13. While Respondent found that P.H. "has pain and stiffness with ambulation," a finding which was essentially the same as at the previous visit ("pain with ambulation" and "stiffness and pain with lumbar range of motion"), she concluded that P.H. now had "severe low back pain" and increased the strength of the OxyContin four-fold to 80 mg. and prescribed 90 tablets, with the same dosing of one tablet every eight hours. *Id.*

On November 9, P.H. again saw Respondent. *Id.* at 14. Respondent noted that her physical exam showed less pain and stiffness with ambulation and that P.H. had less swelling over her lower lumbar area. *Id.* Respondent gave her another prescription for 90 tablets of OxyContin 80 mg. (q8h), along with Robaxin. *Id.* On November 14 (five days later), P.H. was back and complaining that the OxyContin was "causing severe drowsiness" and "increased swelling over [her] lumbar spine." *Id.* Respondent now found that P.H. had "severe pain with ambulation," "swelling over lower lumbar spine," and "severe tenderness over [her] lumbar spine." *Id.* Respondent concluded that P.H. had a "poor response to long acting opioids" and told her to discontinue the OxyContin. *Id.* She then gave P.H. prescriptions for 200 Percocet and 200 oxycodone 5 mg. (2–3 q4h) PRN. *Id.* at 14–15.

Respondent issued additional prescriptions for 200 Percocet on December 11, and January 9, and for 200 oxycodone 5 mg. (with the same dosing of 2–3q4h) on December 11, January 9, and January 22. *Id.* at 14–15. On February 6, Respondent noted that while P.H. was "still with low back pain," she was "doing better in general" and that the "physical exam shows she is in less distress with less pain with ambulation." *Id.* at 15. Respondent gave her a prescription for 200 Percocet as well as 100 Roxicodone. *Id.* The Roxicodone prescription was, however, for the 30 mg. strength and gave a dosing of one tablet every eight hours and thus increased the amount of the drug from a maximum of 90 mg. (18 5 mg. tablets) to 240 mg. (eight 30 mg. tablets) per day. *Id.*

On February 28, Respondent gave P.H. additional prescriptions for both 200 Percocet and 100 Roxicodone 30 mg., and on March 8, she gave P.H. an additional prescription for Roxicodone 30 mg. *Id.* at 16. On March 20, Respondent noted that P.H. "continues on medications with good pain relief," that she had only "slight swelling" and had "slight pain with ambulation." *Id.* Respondent gave P.H. new prescriptions for 200 Percocet and 100 Roxicodone 30 mg (q3h); she also added a prescription for 100 oxycodone 5 mg. (3–4 q3h). *Id.*

On March 27, P.H. was complaining of severe pain, that her hips were "locked up," that it was "the third time in less than 2 weeks that she had bad pain," and that "the Roxicodone isn't working." *Id.* Respondent performed a physical exam and noted that P.H. had "stiffness antalgic wide based ataxic gait," "tenderness over [her] bilateral lumbar paraspinals," "swelling" over [her] "lumbar spines," and "pain with lumbar range of motion, which is limited." *Id.* Respondent diagnosed P.H. as having chronic low back pain and doubled the dosing of the Roxicodone 30 mg. to two tablets every three hours. *Id.* at 16–17. Three days later, Respondent noted that P.H. had blacked out and "has been having a lot of blackouts." *Id.* at 17.

On April 2, Respondent gave P.H. another prescription for 100 Roxicodone 30 mg. with the same dosing. *Id.* At the next visit (April 11), P.H. also complained of right calf pain. *Id.* Respondent diagnosed P.H. as having a right calf muscle spasm (in addition to low back pain) and gave her prescriptions for 100 Roxicodone 30 mg., 200 Percocet, and 100 oxycodone 5 mg. *Id.* Respondent issued additional prescriptions for Roxicodone 30 mg. on April 30 and May 3, for oxycodone 5 mg. on April 24, and for Percocet on May 3. *Id.* at 17–18.

On May 15, P.H. again saw Respondent and indicated that she had an appointment to see a dermatologist, Dr. H., in two weeks for a condition (bulbous pemphigoid) which had been diagnosed by a physician at an emergency room. *Id.* at 18. Respondent's physical exam indicated that P.H. had a "severely antalgic gait," and "open sores over burning and both lower extremities and [a] severe sore over [her] right foot." *Id.* Respondent diagnosed P.H. as having bulbous pemphigoid and chronic low back pain, and gave her a prescription for 500 tablets of Roxicodone 30 mg., with five tablets to be taken even four hours as needed. *Id.* Respondent thus increased the dosing of Roxicodone from approximately 480 mgs. to 900 mgs. of oxycodone per day. *Id.* There is no evidence that Respondent ever consulted with the dermatologist that P.H. saw for the condition. *See id.* at 18–19. According to the Government's expert, these "superficial skin lesions * * * would not be justification for anything other than mild analgesics." GX 46A, at 9.

Throughout June and July, Respondent continued to prescribe approximately 900 mgs. per day of Roxicodone. GX 55, at 18–19. She also gave P.H. prescriptions for 200 Percocet on June 4, June 18, July 2, and July 18. *Id.* As Dr. Hare noted with respect to the Percocet prescriptions, a review of P.H.'s "prior prescriptions would [have] indicate[d] that she was using 14 tablets/day which could result in acetaminophen toxicity, [and] the Percocet would be totally unnecessary with the amount of Roxicodone the patient was receiving." GX 46A, at 9.

[63] According to the note, P.H. told Respondent that she had obtained the prescription from Dr. K. because she was not going to see Respondent "for a few more days." GX 55, at 11. P.H. also told Respondent that she did not fill the latter's prescription until May 15. *Id.* There is, however, no indication that Respondent contacted Dr. K. to determine the extent to which P.H. was obtaining other prescriptions or to coordinate their prescriptions. *Id.*

[64] None of the progress notes preceding this date indicate what the dosing of the Percocet was. The first note indicating the dosing is not dated until April 11, 2001. GX 55, at 1–17.

Respondent initially treated A.B. for right leg pain with oxycodone (dosage strength not indicated) and Percocet, as well as Zanaflex, a non-controlled drug. GX 56, at 1–2. Respondent's initial evaluation indicated that A.B. was already taking Percocet and Robaxin (a non-controlled drug), *id.* at 1, but Respondent "did not document the effects of the medications." GX 46A, at 10. Nor is there any indication that she contacted the physician who had presumably prescribed these drugs to A.B. to obtain records of prior treatment. GX 56, at 1–2. Moreover, while A.B. reported that an MRI of her lumbar spine had indicated that she had a herniated nucleus pulposus, A.B. did not know at what level the disk was, *id.* at 1, and there is no evidence that Respondent even attempted to obtain the MRI report. *Id.; see also* GX 46A, at 10.

On January 9, 2001, Respondent added OxyContin 10 mg. and prescribed 60 tablets, with one tablet to be taken every twelve hours (and which should have lasted 30 days). GX 56, at 2–3. She also gave A.B. prescriptions for 200 Oxycodone 5 mg. and 100 Percocet. *Id.* Respondent further noted that there would be a "recheck in one month." *Id.* Yet only thirteen days later, A.B. was back and complaining of a severe migraine, right leg pain, and a severe inverting of her foot. *Id.* at 3. Respondent gave her additional prescriptions for 200 oxycodone 5 mg. and 100 Percocet. *Id.* Respondent also gave her another prescription for 60 OxyContin and doubled the strength of the drug to 20 mg. *Id.* However, the dosing remained the same, and thus the OxyContin should have lasted thirty days.

On February 6, A.B. returned. *Id.* While the note for this visit indicated that A.B. had pain with right straight leg raising test, there is no other indication as to the extent of A.B.'s pain and there is no indication that she was still complaining of migraines. *Id.* at 3–4. Respondent gave A.B. a new prescription for 60 tablets of OxyContin 20 mg., and increased both the Percocet and Oxycodone prescriptions to 150 and 300 tablets respectively. *Id.* Again, there is no indication as to why A.B. already needed another OxyContin prescription.

On February 21, A.B. apparently called Respondent and reported that she had undergone a lumbar laminectomy a week earlier, that she was in severe pain, and had only been given 20 Percocet for post-operative pain. *Id.* Respondent gave her prescriptions for 60 tablets of OxyContin (doubling the strength to 40 mg.), with one tablet to be taken every twelve hours, and 200 tablets of oxycodone 5 mg. *Id.* As the Government's Expert noted, there was "no indication that the patient had already used all of the previous OxyContin prescription and this was not accounted for by" Respondent. GX 46A, at 11. Moreover, on February 28, Respondent gave A.B. another prescription for 150 tablets of Percocet. GX 56, at 4.

On March 9, Respondent gave A.B. additional prescriptions for 60 OxyContin 40 mg. and 200 oxycodone 5 mg. *Id.* at 4. Again, even though the previous OxyContin prescription should have lasted thirty days if taken as prescribed and only sixteen days had passed, there is no indication that Respondent questioned A.B. as to why she needed more of the drug. *Id.*

On March 20, A.B returned. *Id.* At this visit, Respondent noted that A.B. had supination of her right lower extremity with ambulation and that muscle spasm had returned there; she also noted that A.B. had chronic low back pain. *Id.* Respondent then gave A.B. a prescription for 60 tablets of OxyContin and doubled the strength from 40 to 80 mgs. *Id.* at 5. She also gave A.B. prescriptions for 200 oxycodone 5 mg. and 150 Percocet. *Id.*

In April, Respondent received a note (apparently from the surgeon who performed the laminectomy) that A.B. was complaining that the symptoms she had before her back surgery had returned. *Id.* Moreover, her surgeon was going to repeat an MRI and "get an EMG/NCV of [her] right lower extremity to rule out neuropathy." *Id.* However, according to a June 4 note, the MRI of her brain was normal. *Id.* at 6. A.B. was to also get another MRI of her lumbar spine, but there is no indication in the record that she did so. *Id.*

At the June 4 visit, Respondent noted that A.B. "complains of problems with sleeping, and would like to take 2 OxyContin at night instead of 1." *Id.* Respondent issued her a prescription for 90 tablets of OxyContin 80 mg., with one to be taken in the morning and two to be taken at night (also a thirty-day supply if taken as prescribed). *Id.* On June 26, Respondent increased the dosing to two tablets every twelve hours of OxyContin (120 tablets or a thirty-day supply). *Id.* at 7. At both June visits, she also gave A.B. prescriptions for 100 tablets of Roxicodone 30 mg. and 150 Percocet. *Id.* at 6–7. On July 18, Respondent gave A.B. new prescriptions (in the same quantity and dosing) for each of these three drugs. *Id.*

At M.H.'s initial visit on July 23, 2001, Respondent diagnosed her as having shingles and gave her prescriptions for 60 tablets of both OxyContin 20 mg. (q12h) and Percocet (1–2 q4h). GX 54, at 1. On July 27, M.H. returned to Respondent and reported that her "[i]nsurance wouldn't cover OxyContin or MS Contin." *Id.* at 2. There is no indication in the file that Respondent requested that M.H. return or destroy the OxyContin prescription. *Id.* Respondent did, however, give her a prescription for another 100 Percocet. *Id.*

On July 30, 2001, a local pharmacist called Respondent and told her that the day before A.B. had picked up an OxyContin prescription for M.H. and paid cash for the drugs. GX 56, at 7. The pharmacist observed A.B. walk past M.H.'s car to a silver sports car and place the unopened bag through the window of the sports car. *Id.* at 7–8.

The pharmacist further told Respondent that A.B. had come to the pharmacy the day after the incident to pick up a prescription. *Id.* at 8. The pharmacist asked A.B. "if she knew anyone who owned a silver sports car." *Id.* A.B. answered "no," but when the pharmacist recounted the incident of the day before, A.B. stated that "her mother said that that was her nephew, and that [A.B.] just forgot." *Id.* According to A.B.'s patient record, A.B. "told the pharmacist not to make a big deal about it." *Id.*[65]

M.H. returned to Respondent's office on August 10. GX 54, at 2. According to the note for the visit, M.H. explained that it was P.H. and not A.B. who had passed the OxyContin to the silver car and that the drugs had been for M.H.'s nephew, who she claimed had pain. *Id.* M.H. also told Respondent that she was "never going to buy the OxyContin, because it [was] too expensive," and that her nephew had "paid for it." *Id.* M.H. "promised this would never happen again, and she understood the severity of the situation." *Id.*

On August 3, P.H., who Respondent was treating for both knee and back pain with Percocet and Roxicodone, saw Respondent. GX 55, at 20. According to the progress note, P.H. "ha[d] given Percocet to her mother and sister and wants more Percocet." *Id.* While Respondent did not issue any prescriptions at this visit, there is no indication that she counseled P.H. regarding this. *See id.*

On August 5, both P.H. and A.B. were in an auto accident. GX 55, at 20; GX 56, at 8. On August 17, P.H. again saw Respondent, who again concluded that she had a knee injury and low back pain. GX 55, at 20. Respondent again prescribed Percocet (200 tablets, 1–2

[65] This was the first count in the plea agreement. *See* GX 6, at 7.

q4h), and Roxicodone 15 mg. (1000 tabs 10 q4h). *Id.* Notably, while this was P.H.'s first visit since M.H. had told Respondent that P.H. had been the one who had obtained the OxyContin and delivered it to M.H.'s nephew, there is no indication in P.H.'s record that Respondent counseled her about the incident. *See id.*

On August 23, P.H.'s file contains a note indicating that Respondent had again spoken with the pharmacist who reported the July 29 diversion incident. *Id.* Once again, the pharmacist "insist[ed] that [P.H.] and [A.B.] are selling" their medications. *Id.*

On August 27, P.H. again saw Respondent and was accompanied by A.B. *Id.* at 21. Respondent wrote P.H. a prescription for the balance of the Roxicodone prescription that she had written on August 17, which P.H. had been unable to fill completely. *Id.* at 20–21. There is, however, no indication in P.H.'s file that Respondent questioned P.H. about whether she was selling her medications. *Id.* Moreover, while the pharmacist had insisted that A.B. was also selling medications, there is no indication in A.B.'s patient file that Respondent had counseled her not to do so.

Respondent testified that although she did not notate it in any file, A.B. and P.H. were present when she counseled M.H. about the diversion. Tr. 2355. The ALJ did not credit this testimony. Nor do I. As found above, Respondent counseled M.H. about the incident on August 10th. A.B., however, had been in a motor vehicle accident on August 5th, and according to the August 17 entry in her patient file, A.B. was then "at Healthsouth Rehabilitation [I]nstitute with 'brain swelling.'" GX 56, at 8. A.B. was not discharged until August 23rd. *Id.* A.B. thus could not have been present when Respondent counseled M.H. I further conclude that the lack of documentation in A.B. and P.H.'s files conclusively establishes that Respondent did not counsel either one of them regarding the July 30 incident or any other diversion incidents.

Following the incidents, Respondent continued to treat P.H. for injuries she incurred during the August 5 motor vehicle accident. On October 29, Respondent concluded that P.H. had reached maximum medical improvement with respect to the injuries she incurred in the accident and ceased treating her for them. GX 55, at 25. Respondent, however, continued to treat her for low back pain, phlebitis in her left calf (a condition which she diagnosed on Oct. 15), and bulbous pemphigoid. *Id.* For these conditions, Respondent prescribed 200 tablets of Percocet and 500 tablets of Roxicodone 15 mg. (with 10 tablets to be taken every 4 hours). *Id.*

On December 21, Respondent noted in P.H.'s record: "faxed refill request from Bashas' [pharmacy] for Vicodin prescribed by Dr. H. [P.H.'s dermatologist] denied." *Id.* at 27; *see also id.* at 18. Here again, there was evidence that P.H. had either obtained or attempted to obtain controlled substance prescriptions from other physicians. *Id.* at 27. And once again, there is no documentation that Respondent questioned P.H. about other controlled substance prescriptions she had obtained or that Respondent had contacted the prescribing physician to coordinate their prescribing to P.H. *Id.*

Respondent also introduced two letters into evidence from a Dr. Kaplan, the primary care physician for A.B. and P.H., apparently to show that he approved of Respondent's prescribing to them. Tr. 2131; RX B & C. Respondent further indicated that Dr. Kaplan had to authorize her prescriptions for the insurance plan that the two were on. Tr. 2131.

Dr. Kaplan's letter regarding P.H. simply says that he "was aware that she was receiving chronic high dose narcotic analgesic therapy for chronic pain from" Respondent. RX C. The letter does not, however, say that Respondent's prescribing to P.H. was medically appropriate. *See id.*

In contrast to the letter he wrote about P.H., Dr. Kaplan stated that A.B. "has been receiving appropriate analgesic medications from [Respondent] during 2001 and 2002." RX B. While Dr. Kaplan stated that his chart notes confirmed that he had been aware that Respondent had been treating A.B. since early 2001, he did not claim that he had reviewed the entire course of Respondent's prescribing to A.B. *See id.*

In a letter dated October 22, 2002, Respondent's own expert, Dr. Schneider, who was mentoring Respondent, noted that P.H. "has an addiction history" and instructed Respondent to "[f]ind out to what was she addicted and how recent." RX D–6, at 2. Dr. Schneider also noted that P.H. "attends COPE," and instructed Respondent to find out "if they know about her opioid treatment." *Id.* P.H., however, died before Dr. Schneider sent the letter. *Id.*

Dr. Hare reviewed the patient files of P.H. and A.B. GX 46A, at 8–12. With respect to P.H., Dr. Hare observed that she was "a patient with multiple complain[t]s which were not adequately evaluated by [Respondent] and yet she continued to prescribe increasing amounts of controlled substances, particularly opioids with no apparent improvement in the patient's condition." *Id.* at 10. Moreover, "[e]ven though there were numerous 'red flags' regarding the patient's misuse of medication, including use of the prescriptions in excess of the prescribed amounts, possible diversion of medication and the admitted sharing of medication with relatives, Respondent continued to prescribe unabated. Any reasonable physician would have noted these strong warning signs and investigated these problems while not prescribing further for this patient." *Id.*

With respect to A.B., Dr. Hare observed that she "presented as a patient with many problems which were not properly diagnos[ed] and evaluated by" Respondent. *Id.* at 12. Dr. Hare further noted that, while "there were a number of indications of overuse of medications" including "early prescriptions," as well as "clear reports of diversion," Respondent continued to prescribe to her.[66] *Id.*

H.T.

H T. was the patient name for an FBI informant who started treating with Respondent at her prior clinic in May 1998. GX 71, at 16. Initially, H.T. was treated for continuing lower back pain with physiotherapy and other methods; Respondent did not, however, prescribe controlled substances to him. *See generally* GX 71. According to H.T.'s record, during this phase of Respondent's treatment of him, she did her last physical exam of him on March 8, 2000. *Id.* at 7.

After a lengthy absence, H.T. returned to Respondent's office in February 2002 and met with C.M., a chiropractor who worked with Respondent. GX 60. H.T. mentioned that he had been living in Montana and doing roofing work, and that "a couple of times when [he] was roofin[g], [he] had a little twinge" or "twitch back there." *Id.* at 4. H.T. added, however, that he was feeling good. *Id.* While Respondent saw H.T. at this visit, she did not prescribe any drugs to him. *Id.*

H.T. returned on March 4.[67] GX 61. During the visit, H.T. told Respondent

[66] In her findings, the ALJ writes, "Yet Dr. Weinstein credibly wrote that Dr. Hare's premise that 'medication abuse and diversion are related to the amount of medication prescribed to an individual patient' was false." ALJ at 87. However, Dr. Hare's finding of "red flags" was not related solely to the amount of medication prescribed but to the reported behavior of diversion.

[67] In her response to the Government's Exceptions, Respondent challenges the authenticity of the transcripts of the recordings of H.T.'s undercover visits. I reject her challenge noting that the underlying tapes had previously been provided to either her or her attorney in the course of the

that when he was working "in Montana I had a sore back sometimes. But I just think it was because I was working." *Id.* at 12. H.T. subsequently told Respondent he had "been feeling really good" and denied that the pain went down his leg. *Id.* at 12–13. H.T. then told Respondent that one of his friends had a relative who was doctor and that the doctor had given him Percocet Tens (10 mg.). *Id.* at 15–16. H.T. then asked Respondent if she could give him Percocet Tens. *Id.* at 16–17. Respondent tried to persuade H.T. to take Percocet Fives (5 mg.). *Id.* at 17. H.T. insisted that he wanted the Percocet Tens. *Id.* at 21. After telling H.T. that because the Percocet Tens were new and half of the area pharmacies didn't stock it, Respondent asked him whether he wanted to try forty or sixty tablets. *Id.* H.T. said sixty, *id.,* and Respondent gave him a prescription for sixty tablets of Percocet 10/325. *Id.* at 26. Respondent told H.T. to take only six tablets a day, because the Tylenol (acetaminophen) is "a bad thing." *Id.* at 27. Continuing, Respondent stated that the "the other stuff is a fun thing" and that H.T. could also try pure oxycodone. *Id.*

The patient record indicates that a physical examination was performed, but there is no such indication in the transcript from that visit. *Compare* GX 71, at 7–8, *with* GX 61. According to the patient file, Respondent found that H.T. "ha[d] slight pain with lumbar range of motion and especially has pain with lumbar extension combined rotation," and diagnosed him as have "chronic biomechanical low back pain." GX 71, at 8. There is, however, no indication in the transcript of the visit that Respondent performed a physical exam on H.T. *See* GX 61.

On March 11, H.T. returned to Respondent. GX 62. During the visit, H.T. told Respondent that he had "just tested positive" for Hepatitis C and wanted to change to pure oxycodone from Percocet, which contains acetaminophen. GX 62, at 4. H.T. told Respondent that changing the prescription to pure oxycodone would make him "pretty happy." *Id.* at 4. Respondent asked H.T. if he wanted sixty tablets; H.T. said he "would love" to get sixty. *Id.* at 6. Respondent wrote H.T. a prescription for sixty tablets of Roxicodone 5 mg. GX 71, at 8.

Three days later, on March 14, H.T. returned to Respondent. Respondent asked him to rate his back pain, and suggested "three, four, five, six?" GX 63, at 3. H.T. replied: "ya know, the Doc always sa-, helps me, He puts em down so he can get the insurance company payin[g]." *Id.* Respondent replied: "Okay, five," and H.T. agreed stating: "Five. I've got worse." *Id.*

H.T. asked Respondent for 120 oxycodone, stating that he was going to be gone all of the next week and maybe for a part of the week after that. *Id.* at 6. Respondent then asked H.T. whether he liked the oxycodone; H.T. replied that he "like[d] it, but I had to eat 'em like M & M's," because they were "only fives." *Id.* After explaining to Respondent that she had previously prescribed only 5 mg. tablets, H.T. added that he "was eatin[g] them codones like candy until I noticed they were just five milligramers." *Id.* at 7.

Respondent then asked whether H.T. wanted to stick with the fives because they "are the cheapest." *Id.* H.T. stated that he wanted "something that's stronger." *Id.* Respondent then asked whether he wanted fifteens; H.T. replied that he would "be much happier with fifteens." *Id.* at 7–8. Respondent then explained that "the price breaks at a hundred" so that she would "write a hundred" because the pharmacist could just give him a box and not have to count out extra pills. *Id.* at 9. H.T. then added that oxycodone fives "didn't make me feel as good as those ten Percocets * * * [u]ntil I ate a few more." *Id.*

According to H.T.'s patient record, Respondent wrote a prescription for 100 tablets of Roxicodone 15 mg. GX 71, at 8. The patient record also indicates that Respondent performed a physical exam. *Id.* Again, however, the transcript of the visit does not reflect a physical examination. *See generally* GX 63.

On March 25, H.T. went back to see Respondent. GX 64. According to the transcript, Respondent asked H.T. why he needed to see her because it had not been two weeks since the last visit. *Id.* at 4. H.T. told Respondent that he was there to beg her to give him some OxyContin forties (40 mg.), that an acquaintance had told him that he had "gotta try and get her to give you some of them OxyContin," and the acquaintance had told him that the OxyContin were "really good." *Id.* at 4–5.

Respondent then asked H.T. if he wanted to try the ten milligram OxyContin; H.T. replied: "Ten? He had forties." *Id.* at 5. After H.T. repeated that his acquaintance had gotten forties, Respondent explained that the forties were "for him" and that "there's ten, twenty, forty, and eighty," which are four of the different strengths of the drug. *Id.* at 6. H.T. then suggested that "we split difference," and Respondent said "twenty." *Id.* Respondent next asked if H.T. could take "one of the fifteens and it's fine?" *Id.* H.T. replied that he "probably ate six a day" and asked "is that too many?" Respondent then suggested that "it helped and it's for your back." *Id.* While H.T. initially said "well yeah Doc" and laughed, he shortly added that "my back feels great, but, I like these," and then asked "is that a bad thing?" *Id.* at 7.

After discussing how H.T. was paying for his drugs, H.T. asked Respondent "How many you gonna give me?" *Id.* Respondent replied: "Well, a month would be sixty. You're supposed to take one every twelve hours." *Id.* at 8. H.T. replied "really," and Respondent asked him whether he wanted sixty or thirty tablets. *Id.* H.T. answered that he was "hopin[g] you'd give me a hundred" but that "sixty sounds really good" and laughed. *Id.* Respondent then suggested that H.T. "go through your insurance" and asked him if he was still driving the truck. *Id.* H.T. replied that "if I drive, I'll still do em." *Id.* Respondent then stated: "Alright. Your back is still * * * bad, but the adjustments help." *Id.* Respondent then wrote H.T. a prescription for 60 tablets of OxyContin 20 mg. (q12h), a thirty-day supply if taken as prescribed. GX 71, at 9.

According to the progress note prepared by Respondent for this visit, Respondent performed a physical exam which showed that H.T. "has pain with lumbar range of motion and stiffness with lumbar range of motion." *Id.* Respondent also indicated that she discussed the "risks and benefits of long acting opioids" with H.T., "including risks of addiction and side effect," and that a "pain contract was signed." *Id.* But as the transcript makes clear, Respondent did not perform a physical exam on this date. Nor is there any indication in the transcript that Respondent discussed the addiction risks with H.T. Finally, the transcript does not include any evidence that suggests that Respondent had H.T. sign a pain contract at this visit. Indeed, the record establishes that Respondent did not have H.T. sign a pain agreement until April 23, and that she had him back-date the agreement to March 25. *See* GX 67, at 7–8.

On April 4 (ten days later), H.T. returned to Respondent's office. GX 65. After making small talk about their respective ages, Respondent asked H.T.

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criminal proceeding, that the transcripts were mailed to her on December 28, 2006, and the hearing did not convene until January 22, 2007. *See* Tr. 45. While Respondent maintained that she got the transcriptions "late," she did not establish on what date she received them. *Id.* Accordingly, I conclude that Respondent had more than adequate time to compare the transcripts with the underlying tapes and to prepare a motion setting forth those instances (were there any) in which the transcripts did not accurately reflect the content of the tapes.

if he "like[d] the Oxycoton [sic]?" *Id.* at 4. H.T. answered affirmatively, and Respondent asked him: "That's what you want?" *Id.* H.T. answered: "Yes, please." *Id.*

Respondent then noted that she had given H.T. a month's supply at the previous visit and asked him if he was "takin[g] more of it then." *Id.* H.T. answered affirmatively and subsequently stated that he had taken 50 tablets in seven days, or "about seven a day." *Id.* at 5.

Respondent then asked H.T. if he "want[ed] [a] stronger pill" or if he wanted her "to write that you take more of em." *Id.* H.T. asked: "Do they got 'em stronger?" *Id.* Respondent answered that "[t]hey have a forty milligram." *Id.* H.T. answered "Sure!" *Id.* Respondent stated: "Let's try that. But if you're taking seven, that's ah, four. Okay, let's try three a day." *Id.* H.T. then told Respondent: "You are so good to me." *Id.* H.T. then asked Respondent if she had to write something every time he visited, and Respondent said "I've always had to write somethin[g]." *Id.* at 6.

Respondent then asked H.T.: "what's your number today?" *Id.* H.T. replied: "tell me, what do I look like. You know, you, you guys always help me with my insurance. That's to keep the insurance pay, company payin[g]." *Id.* Respondent replied that she did not know, and H.T. asked her if he "look[ed] like a seven." *Id.* When Respondent replied that he "look[e]d like a zero," H.T. laughed and said: "That means on a pain level, right?" *Id.* H.T. then went to see the chiropractor.[68] At the visit, Respondent gave H.T. a prescription for 90 tablets of OxyContin 40 mg., with a dosing of one tablet every eight hours. GX 71, at 9. The prescription thus not only doubled the strength of the previous prescription but also increased the quantity by another 30 tablets. Based on the dosing instruction, the prescription would last for 30 days.

In the progress note for this visit, Respondent indicated that H.T. had "continued low back pain," and that she had performed a physical exam, which "show[ed] that he has pain [and stiffness] with lumbar range of motion." *Id.* She also noted that he was "doubling up on the OxyContin" and was "even taking more than double." *Id.*

On April 11, one week later, H.T. again saw Respondent and requested a refill prescription, indicating that he would be going out of town for two weeks. GX 66, at 5. As the previous prescriptions would last for 30 days and only one week had passed, H.T. did not need another prescription if he was only going to be gone two weeks. After some small talk, Respondent asked H.T. "do you want the OxyContin?"; H.T. answered: "Yeah." *Id.* at 8–9. Respondent then noted (incorrectly) that H.T. had "just got it March 25th"; before Respondent could complete her next sentence H.T. replied: "I know. I got a maybe about um, fifty left. But I'm gonna be gone for two weeks I think." *Id.* at 9. Respondent and H.T. then discussed when the latter would be leaving, how many pills he had left, and whether his insurance would cover it because he was "so early." *Id.*

Respondent eventually agreed, however, to write H.T. a prescription for twenty-milligram strength and asked him if he "want[ed] ninety?" *Id.* at 11. H.T. replied: "Oh, please. I probably been eatin[g] a few more of those than three a day, okay?"; he then added that he wanted "to be totally honest with" Respondent. *Id.* After an unintelligible comment by Respondent, H.T. reiterated that he only had "fifty left." *Id.* Respondent then asked H.T. whether he would be out of town "for two weeks," and H.T. stated that he was "pretty sure" that he would be gone "for two weeks." *Id.* at 12. Respondent then gave H.T. a prescription for another 90 tablets of OxyContin 40 mg. (also q8h). *Id.; see also* GX 71, at 10. H.T. then told Respondent:" You're okay, Doc," and Respondent replied: "I know * * * You caught me at a soft moment." GX 66, at 12.

On April 23, H.T. returned to Respondent and again sought more OxyContin. GX 67, at 6–7. After discussing with H.T. whether he was on the forty or eighty-milligram strength tablets, Respondent asked him if he had signed a pain management agreement at the last visit. *Id.* at 7. After H.T. replied that he did not think so, Respondent told him that he needed to do so and to date the agreement March 25, 2002. *Id.* at 8. Respondent then explained some of the requirements of the pain agreement. *Id.* at 8–12.

Respondent and H.T. then discussed how many tablets she had given him at some of the previous visits. *Id.* at 12–13. Respondent noted that she had given him 90 tablets and asked him if he was "takin[g] more than three a day?" *Id.* at 14. When H.T. answered "[y]eah," Respondent asked him if he was "out of 'em." *Id.* H.T. then asked: "[i]s that a bad thing?" and added that he had "a few left." *Id.*

Respondent then told H.T.: "They're watchin' me, Hal." *Id.* at 15. H.T. asked: "They're what?" Respondent replied: "I gave you ninety of the forties. I gave you ninety, wait a sec. I gave you on ni-, on the fourth and the eleventh." *Id.* H.T. then said: "I told you I got the * * * constitution of * * * a mammoth. And you have the heart of a mammoth." *Id.* H.T. then added that "I'd never tell you none of them stories about losing' 'em or anything. I just tell ya the truth. I'd just like a few more of those okay?" *Id.*

Following a discussion of what to put in his medical record, (*Compare id. with* GX 71, at 10), Respondent asked him if he could "taper down a little?" because she had given him 90 tablets and a week after that, another prescription because he was "going out of town." *Id.* at 16. H.T. asked "is that a bad thing?," and Respondent explained: "Well, they're watching me, so, I, I can't do it again until this investigation's over." *Id.* After H.T. asked who was watching her, Respondent answered that the State medical board was. *Id.* H.T. then told Respondent that he did not want to get her in trouble, that if the Board came to him, he would "have nothing but nice things to say about" her, and that he would not be coming in with Morley Safer from Sixty Minutes. *Id.* at 17.

Later in the conversation, Respondent asked H.T. to make his drugs "last a little more" and added: "[u]ntil my investigation is over." *Id.* at 18. H.T. initially agreed to, but added that "I hate like though when it says just take three" and that "there's a part of me that want to take one more than or two more than." *Id.* H.T. then suggested that if Respondent gave him the "bigger ones, they'd last longer." *Id.* Respondent replied that "[f]orty is good enough." *Id.*

Respondent then suggested that H.T. try Celebrex, an anti-inflammatory which is not a controlled substance. *Id.* at 19. H.T. replied that "[t]he only pain in my life is the ache in my heart when I'm around you visions of loveliness that work here." *Id.* Apparently, Respondent then gave H.T. a prescription for Celebrex, *see* GX 71, at 19; and H.T. asked if she could give him "some more" OxyContin. GX 67, at 19.

When Respondent said that she couldn't because she had recently given him 90 tablets, H.T. complained that "I only got a few of those left." *Id.* at 20. Respondent then told H.T. she was giving him the Celebrex and that she had given him 90 OxyContin "on the eleventh," which "was like eleven days ago," and he was "taking nine a day" when he was "supposed to take three a day." *Id.* After H.T. complained that he was going to "run out," Respondent told him that he had to be good until next

[68] During his time with the chiropractor, the chiropractor said that H.T. was "doin[g] great," and H.T. agreed that he was "feeling great." GX 65, at 8.

week.[69] *Id.* at 20–21. H.T.'s record also reflects a physical examination, without corroboration from the transcript of the visit. *Compare* GX 71, at 10, *with* GX 67.

On April 29, H.T. again saw Respondent. GX 68. H.T. told Respondent he did not fill the Celebrex and asked: "What do I need an anti-inflammatory for?" *Id.* at 6. Respondent answered "It's for pain," and added that he "should try it." *Id.* H.T. then replied: "Doc, you know between you and me my pain level is non-existent, but, I really like them Oxyco[ntin]. Them make me feel good." *Id.*

Respondent then asked H.T. "if you're not using 'em for pain what're ya using 'em for?" *Id.* H.T. replied: "Cause life is painful, ya know, just that, the heartache and the psoriasis and all that other stuff." *Id.* Respondent then asked H.T. if he was "using it to just make you feel like, mellow?" *Id.* When H.T. replied (laughingly), "what should I say no?," Respondent answered: "I can't prescribe 'em for that reason." *Id.* at 7. When H.T. told Respondent to "put down that I'm in a lot of pain then, okay?," Respondent answered: "But you're not in a lot." *Id.* Respondent then noted that she had given him 90 tablets, and yet he was out of the drugs "by the end of the week" and that he was "getting addicted to 'em." *Id.* at 8–9. H.T. insisted, however, that he was not getting addicted because he had the "metabolism of an elephant" and had "quite a body mass." *Id.* at 9–10.

While Respondent again maintained that she could not keep filling the prescriptions for the reasons H.T. wanted the drugs, she then told him that she could not do it because she was being "watched like a hawk now because * * * everybody thinks I'm writing too many prescriptions for people." *Id.* at 10. H.T. then told Respondent that she did not "have to worry about" him. *Id.*

Respondent then suggested that she "could cut down the dose" and asked H.T.: "You want a small dose?" *Id.* Respondent also told H.T. that "Forties is a high dose." *Id.* Respondent subsequently told H.T. that she had given him "a month's supply on April eleventh" and that "[i]t's not a month." *Id.* at 11. H.T. insisted that it was "pretty dang near though?" *Id.* Respondent told him that he would have to wait until May 11th. *Id.*

H.T. then asked Respondent for a prescription to last until May 11. *Id.* Respondent asked H.T. what had happened to the 100 tablets of oxycodone 15 mg. which she had given him in March. *Id.* at 12. H.T. told Respondent that they were "like aspirin" and that OxyContin "was better than them." *Id.* Respondent then insisted that if H.T. read the news, he would know that "[e]verybody's all afraid of" OxyContin, and that "we have to live with rules." *Id.*

When H.T. reminded Respondent that she had told him that he would be able to get a new prescription "this week," Respondent replied: "you * * * unfortunately told me why you were taking 'em. Has nothing to do with your back pain and that's the only reason you should be taking 'em." *Id.* at 13. Respondent then told H.T. to "[w]ait till May eleventh. Then at least you'll have a month." *Id.* Respondent then added that she was "gonna cut and give [him] twenties." *Id.* H.T. replied: "Twenty. How can you do that?" and Respondent answered: "Hal, wait till my investigation's over." *Id.* at 14.

On May 15, H.T. again saw Respondent. GX 69. H.T. told Respondent that he 'love[d] those pills" and added that while she had told him "to wait till the eleventh," he had "been so good" and that it was then "past the eleventh." *Id.* at 2. Respondent told H.T. that the pills were "supposed to be for back pain." *Id.* H.T. replied he was "getting into that mode, doc," asked if she had seen him "come in here kinda all kinked over and everything," and added that his "modality [was] messed up" and that "homeostasis [wa]s unaligned." *Id.* H.T. then facetiously added that he had "great internal and mental stress" because he had abandonment issues as a child and his wife had divorced him and run off with a bald guy (who was considerably older) more than fifteen years earlier. *Id.* at 2–3.

H.T. then offered to be a character witness for Respondent in the board investigation. *Id.* at 4. When Respondent said that the board would say that she had been giving him drugs and that he was a drug addict, H.T. interjected that he had not been getting drugs from her for that long. *Id.* at 5. Respondent then observed that she had first put him "on twenties then you like the forties." *Id.* H.T. responded that he had the metabolism of a mammoth, and that he would not ask her "again until thirty-five days or whatever." *Id.* Respondent then asked H.T. if he wanted to "take three a day?"; H.T. said "sure." *Id.* at 5–6. Respondent then asked H.T. if he was taking the Celebrex; H.T. said that he had filled the prescription but that it did "not really" help. *Id.* at 6.

Following a discussion of whether H.T. was going to the pharmacy that he said he would use in the pain agreement, H.T. suggested that he fill his prescriptions in Mexico. *Id.* at 7. Respondent said that she did not think that he would be able to fill the prescriptions in Mexico, "especially OxyContin." *Id.* at 8. H.T. then told Respondent that if you went to the border towns such as Nogales, people would come up to him "trying to hustle you for everything," and that one such individual had tried to sell him Viagra. *Id.* H.T. added that he asked this individual about buying OxyContin, and that the individual offered to sell him twenty-milligram tablets for "two dollars a milligram." *Id.* H.T. also added that this individual "wanted to sell everything. Vicodin, ah, Viagra, ah, he was just like a walkin[g] PDR." *Id.* at 9. Shortly thereafter, Respondent issued H.T. a prescription for 90 tablets of OxyContin 40 mg. GX 71, at 11. After he again offered to be a witness for Respondent in the Board's investigation, H.T.'s visit with Respondent ended. GX 69, at 10.

The entry in H.T.'s patient record for this visit indicated that Respondent performed a physical exam and found that he had "pain" and "stiffness with lumbar range of motion." GX 71, at 11. Respondent also indicated that she had performed a "neurological exam of both lower extremities [which] showed normal motor strength, sensation and deep tendon reflexes." *Id.* Again, however, the transcript lacks any indication that Respondent performed the tests she documented as part of her physical exam.

In her Response to the Government's Exceptions, Respondent also contended that H.T.'s loud laughter would have drowned out evidence of the physical examinations she claims to have performed. Response to Exceptions at 2. Respondent also maintained that "after four years of these physical exams, there are necessarily fewer specific directions to the patient," and that H.T. knew the routine for her focused physical examination and did not have to be told what to do. *Id.*

Respondent's arguments are not persuasive. As for her contention that he knew her routine after so many years of exams, the record establishes that on March 4, 2002 (the date she started prescribing controlled substances to him), she had not physically examined him since March 8, 2000, a period of nearly two years. *See* GX 71, at 7. Between these exams, H.T. had been physically examined by at least two other physicians (on May 31, 2000 and January 24, 2001) for the same condition. *See id.* at 23 & 27. It is therefore exceedingly unlikely that H.T.

[69] The patient record indicated that Respondent performed a physical exam at the April 23 visit. GX 71, at 10.

would have remembered Respondent's routine for performing a physical exam.

Moreover, the transcripts of H.T.'s various visits do not contain even a trace of the prompting that a physician would use in performing a physical exam. As for Respondent's further contention that H.T.'s laughter drowned out her directions when she performed an exam, the instances of laughter (and by whom) were noted in the transcripts and were quite limited. Finally, while Respondent maintains that "[t]he actual audio tape contains lots of loud laughing by H.T.," she did not identify specific examples of this in her briefs. I thus conclude that Respondent failed to physically examine H.T. on March 4, 14, and 25, April 4 and 23, and May 15, 2002. I further find that Respondent falsified H.T.'s medical record for these six visits by indicating that she had performed a physical exam when she did not.[70]

The gist of Respondent's testimony with respect to H.T. was that she was duped. For example, Respondent testified that H.T. "was always a very loud, obnoxious patient," that he "was a three-time convicted felon who somehow made a deal with the FBI to become * * * [a] 'mole,'" and that he carried a "Tri-Care insurance card, which identified him as E–8, enlisted man 8, which is a pretty high rank for an enlisted person." Tr. 2068. According to the Respondent, "[d]octors being human, we give some credibility to a person based on their credentials." Tr. 2068–69. *See also* Tr. 2316 ("In my mind [the prescriptions were] for a legitimate medical purpose, but obviously, when I'm confronted with the fact * * * that the person I thought I was prescribing to was lying to me and faking, then one can't but help but then conclude based on that retrospectively that that was not for a legitimate medical purpose.").

Continuing this theme, Respondent complained that H.T. presented "a true * * * a seemingly true insurance card" such that the insurance company would have received payments "[s]o there was no question, to us, that he was telling the truth * * * about who he was." Tr. 2071. She also testified that his visits followed September 11, 2001, and that there "was certainly a new-found respect for the military after 9/11" such that she "afforded him some deference." Tr. 2072.

Respondent further claimed that "we kept thinking that he was coming because he had back pain" and that "all of our documentation and our conversations with him were assuming that he was having back pain." *Id.* at 2073. Yet she also acknowledged that there were several times when she "wanted to" put him on "maintenance care" and have him come less frequently because his back was "much better." *Id.* at 2072. Respondent claimed that "it's really hard for a doctor to just get rid of patients" and "the fact that we didn't like him is not a reason to get rid of him." *Id.* at 2072–73.

Moreover, Respondent testified that at the visit when H.T. asked for Percocet, he did not present any "significant change" in his condition and that his "physical exam was never very significant." *Id.* at 2075. She claimed that she "trusted him" and that "when he asked [her] for Percocet * * * he needed it" even though he "was using words very unusually." Tr. 2075–76.

Respondent testified that "in retrospect" she "should have been suspicious because he's laughing" as they talked.[71] *Id.* at 2074. Respondent maintained, however, that medical professionals are "not trained to be suspicious of people" or "to figure out inconsistencies in what people tell us." *Id.* at 2075. But she then acknowledged that H.T. never had neurological symptoms or that there was "any reason to suspect he had a herniated disc and needed to have surgery or any emergency procedure." *Id.* at 2075–76. Finally, while Respondent admitted on cross-examination that the prescriptions she issued to H.T. lacked a legitimate medical purpose, this was because he "was not a true chronic pain patient" and "the fact that everything he was presenting to me was not correct." *Id.* at 2322.

The transcripts of H.T.'s visits make plain that Respondent's testimony is self-serving and disingenuous. For example, at the March 4, 2002 visit when H.T. returned and requested Percocet, he indicated that he had had "a sore back" only "sometimes," and that was when he was working. He also made clear that he had "been feeling really good" and denied that the pain went down his leg. Moreover, he asked for a specific drug—Percocet 10/325. Finally, when Respondent counseled him about the risk of taking too many tablets because of the drug's acetaminophen content, which she characterized as "a bad thing," she then added that "the other stuff [the oxycodone] is a fun thing." Moreover, Respondent did not physically examine him even though she had not seen him in nearly two years. In short, Respondent knew that H.T. was not seeking the Percocet to treat a legitimate pain complaint.

At subsequent visits, H.T. made additional comments which made clear that he was engaged in drug-seeking. For example, at the March 11 visit, H.T. told Respondent that changing his prescription to oxycodone would make him "pretty happy," and when Respondent asked if he wanted 60 tablets, H.T. told her that he "would love" to get 60. Moreover, H.T. told Respondent that he was eating the oxycodone 5 mg. tablets "like candy" and "M & Ms." Moreover, Respondent did not perform a physical exam even though she indicated that she had in H.T.'s record.

At the March 25 visit, H.T. told her that he was there to beg her to give him some OxyContin 40s. And when Respondent commented that it was o.k. that H.T. was taking six fifteen-milligram Roxicodone tablets a day because it was for his back, H.T. laughed and added that his back felt great but that he liked the drugs.

Throughout these visits, H.T. also presented a pattern of seeking additional drugs, as well as more powerful drugs, well before the previously issued prescriptions would have run out. Moreover, after she gave H.T. a prescription for another 90 tablets of OxyContin 40 mg. (merely a week after a previous prescription for the same strength and quantity, which should have lasted thirty days based on the dosing instruction), H.T. told her

[70] Dr. Hare reviewed H.T.'s patient file. Dr. Hare remarked that when H.T. returned in March 2002, Respondent's physical examination was "minimal," and Respondent did not inquire as to the physician who had prescribed the Percocet to him. GX 46A, at 2. Dr. Hare further noted that Respondent started H.T. at "one of the stronger doses of Percocet," and Dr. Hare questioned why she did not begin with a lower dose. *Id.* On March 11, 2002, when Respondent switched H.T. from Percocet to oxycodone, she did not notate her reasoning in the file. *Id.* At that time H.T. was taking approximately nine tablets of Percocet a day, in excess of the prescribed amount. On March 14, when he returned, he was taking approximately 20 tablets/day, "2/3 oxycodone at a time," without any indication of improvement in his pain. *Id.* On April 4, when Respondent noted that H.T. was "doubling up on OxyContin, even taking more than double," Respondent wrote for OxyContin 40 mg., one each eight hours. *Id.* Dr. Hare noted that one week later, when H.T. indicated he would be going out of town for two weeks, Respondent again wrote for 90 OxyContin 40 mg. *Id.* He noted that the "same information and the same physical examination is stated in the chart" for both April 23 and the subsequent visit on May 15. *Id.*

Dr. Hare concluded that "the history and the physical were inadequate to allow prescribing of a control [sic] substance." *Id.* at 3. Respondent "rapidly escalated the dose" without any documentation that the pain responded to opioid medication, and the patient "consistently used the medication in excess of her prescriptions." *Id.* For Dr. Hare, "[t]his should have been an indication to [Respondent] that the patient was non-compliant and using medication in excess, raising the likelihood of abuse or diversion." *Id.*

[71] The transcripts reflect, however, that Respondent frequently found H.T. to be amusing.

"You're okay, Doc," to which Respondent replied: "I know * * * You caught me at a soft moment."

When H.T. sought more OxyContin at the next visit (April 23), H.T. did not claim that he was in pain and told her that he never made up any stories about losing the drugs and that he was telling the truth and just wanted to get "a few more." Moreover, Respondent told H.T. that she could not write another prescription so soon because the State Board was investigating her. Furthermore, later in this visit H.T. told Respondent that he did not have pain ("the only pain in my life is the ache in my heart when I'm around you visions of loveliness that work here").

At the next visit, H.T. once again made clear that his "pain level is non-existent." When Respondent questioned H.T. further as to why he wanted the drugs, H.T. made plain that he was seeking the drugs to abuse them and not to treat pain. Respondent further told H.T. that she could not give him a new prescription until at least a month had passed from the previous prescription and that he should wait until the investigation was over.

Finally, at the last visit, H.T. once again made clear that he was seeking the drugs to abuse them and not to treat pain. Moreover, he also told Respondent that he had tried to buy OxyContin on the street in Mexico and even cited the price per milligram. Respondent nonetheless gave him another prescription for 90 tablets of OxyContin 40 mg.

It is thus clear that Respondent knew that H.T. was not seeking the drugs to treat a legitimate pain condition, but rather to abuse them. Respondent was in no sense duped by H.T. as to his reason for seeking the drugs; indeed, she clearly knew that he was seeking the drugs for an illicit purpose.

K.Q.

Respondent treated K.Q. as early as 1992, but her patient record in evidence starts in 1997.[72] Tr. 2097; GX 58, at 2. On March 17, 1997, K.Q., who was then a 37-year-old female, visited Respondent. *Id.* K.Q. complained of "low back pain radiating to right lower extremity and numbness right lower extremity" after having fallen down in a grocery store some three to four days earlier. *Id.*

K.Q. was on disability and had been in two prior motor vehicle accidents. *Id.* K.Q. had been diagnosed two years earlier with "pseudotumor cerebri" and was still being treated for this condition by another physician, Dr. S. *Id.* K.Q. had had "dozens of LPs[73] to drain CSF fluid." *Id.* She was also still treating with Dr. L., who was prescribing Percocet to her, apparently for either a bulging or herniated disk at L2–3. *Id.*

In her medical history, Respondent noted that K.Q. was taking Lorcet, a schedule III controlled substance which contains hydrocodone; Xanax, a schedule IV controlled substance; as well as two non-controlled drugs, Prozac and Mevacor. *Id.* There is, however, no indication in the progress note as to who was prescribing these other drugs. *Id.*

Respondent performed a physical examination and diagnosed K.Q. as having chronic low back pain and muscle spasm, with a temporary exacerbation of pain, cervical pain, and muscle tenderness. *Id.* at 2–3. As part of the treatment plan, Respondent gave K.Q. a prescription for 20 Percocet. *Id.* at 3. She also recommended that K.Q. get "cervical and lumbar x-rays," cervical and lumbar range of motion testing to accurately document ROM deficits and motion [K.Q.'s] progress through rehabilitation, and a "[c]omprehensive program of joint mobilization and physiotherapy." *Id.* There is no indication in the progress note, however, that Respondent contacted Dr. L., who reportedly was still treating her and prescribing Percocet, or Dr. S., to determine what drugs they were prescribing to K.Q. and to coordinate her prescribing.

K.Q. underwent physical therapy the same day, as well as on the next two days. *Id.* at 4. During her March 19 visit, K.Q. sought a prescription for 90 Percocet "because of a price break and because she got a check from the church made out for exact amount of 90 Percocet." *Id.* Respondent wrote a prescription for 90 Percocet. *Id.* After this, K.Q. did not appear for any more physical therapy sessions. *Id.* Moreover, there is no entry in the progress notes indicating that x-rays were done. *Id.* at 3–4.

On October 27, more than seven months after her last visit, K.Q. reappeared. *Id.* at 4. She complained of "severe low back pain, mid back pain and headaches," and reported that she was "on OxyContin and Duracet, as well as either Xanax or Valium." *Id.* K.Q. said she saw Dr. L. every two weeks but had missed her October 1 appointment and had missed getting her prescriptions and that Dr. L. was out of town until November 3. *Id.* K.Q. and Respondent apparently did not discuss why, if K.Q. was seeing Dr. L. every two weeks, she had not seen him in the middle of October. Moreover, there is no indication that Respondent contacted Dr. L.'s office to verify whether he was away (or whether there was no one else in his practice who was covering for him).

After a physical examination, Respondent diagnosed K.Q. as having chronic low back pain and myofascial pain. Respondent then prescribed 60 OxyContin 20 mg. BID, 90 Xanax 1 mg. TID, and 30 Duracet 10 TID. *Id.* at 5. Respondent discussed the risks and benefits of long-acting opioids with K.Q., that any early renewals would be at her discretion, that "any doses changes need[ed] to be order[ed] by" her, that K.Q. should undergo a program of joint mobilization and physiotherapy two times per week with a recheck in three weeks. *Id.* Respondent also noted that K.Q. should "[c]ontinue care with Dr. [L]." *Id.* Notably, there is no explanation as to why Respondent prescribed Xanax other than that K.Q. told her that she was taking it.

Later that day, the pharmacy called to tell Respondent that "[t]here is no medication Duracet." *Id.* Moreover, there are no progress notes (as there were in March) indicating the dates, if any, on which K.Q. underwent physical therapy. *Compare id.* at 4 with *id.* at 5.

On November 17, K.Q. returned and again complained of "severe low back pain" and a "shooting pain" in her right leg. *Id.* K.Q. indicated that she had neck pain associated with migraine headaches. *Id.* She also told Respondent that she was currently taking OxyContin 40 mg. in the morning and OxyContin 20 mg. in the evening, as well as "a muscle relaxant called 'Durect.' " *Id.* Respondent gave K.Q. samples of Zanaflex 4 mg. and prescriptions for 90 tablets of OxyContin 20 mg. "2 q AM and 1 q PM" (a thirty-day supply), and 90 tablets of Xanax 1 mg. "TID" (also a thirty-day supply). *Id.* at 6. Again, notwithstanding that K.Q. had told Respondent that she was taking a drug that Respondent had not prescribed to her, there is no indication that Respondent contacted any of the others physicians whom K.Q. was seeing.

Twelve days later, on November 29, Respondent phoned in a prescription for thirty Vicodin when KQ reported that her "purse was stolen." *Id.* Respondent had not previously prescribed Vicodin (or any other medication containing hydrocodone) to K.Q. While this was another indication that K.Q. was obtaining drugs from multiple physicians or from the street, again there is no indication that Respondent even questioned K.Q. as to who the source of the Vicodin was. *Id.* Nor is

[72] According to Respondent, the earlier records had been archived. Tr. 2097.

[73] Lumbar punctures.

there any indication that Respondent required K.Q. to present a police report.

On December 8, K.Q. returned and complained of severe low back pain, neck pain, and headaches. *Id.* She also complained of numbness and of a shooting pain in her right lower extremity. *Id.* Following a physical exam which was limited to palpating her right upper trapezius muscle and lumbar area, Respondent wrote her prescriptions for another 90 tablets of both OxyContin 20 mg. (2 qam and 1 qpm) and Xanax (1 tablet three times a day). *Id.* Notably, the prescriptions she issued on November 17 should have lasted another nine days (until December 17). Respondent also noted that she "need[ed] to discuss case with Dr. L." *Id.* There is, however, no indication in the patient file that Respondent ever called Dr. L.

On December 23, K.Q. needed a three-month prescription for OxyContin and Xanax "to mail away for." *Id.* Respondent obliged and wrote her prescriptions for 279 tablets of OxyContin and 270 tablets of Xanax. *Id.* at 7.

About one month later, on January 20, 1998, K.Q. returned, complained of severe low back pain, and indicated that she had "taken slightly more of OxyContin." *Id.* K.Q. told Respondent that she had "never mailed away for the [three] month supply of the OxyContin" but apparently had for the Xanax, as she did not need another prescription for the latter. *Id.* Respondent did not perform a physical exam on K.Q. Nor did she question how she had managed to continue taking OxyContin and done so at an increased dose when the last prescription Respondent issued to her (prior to the one she claimed not to have filled) was on December 8, six weeks earlier. Nor did she ask K.Q. to return the OxyContin prescription she issued on December 23. *Id.*

On February 2, Respondent discontinued the OxyContin and placed K.Q. on Duragesic patches. *Id.* at 8. She also noted that K.Q. was "very depressed," diagnosed her as having depression, and gave her a prescription for 90 Valium 10 mg.[74] *Id.* Respondent did not indicate in the record why she was switching K.Q. from Xanax, a drug which is in the same class as Valium. Moreover, given the size of the previous Xanax prescription (a three-month supply which was written in late December), the Xanax should have lasted until late March.

On March 2, after a brief trial of the Duragesic patches, K.Q. complained that patches did not work well and "want[ed] back on the OxyContin." *Id.* at 9. Respondent, who did not perform a physical exam, diagnosed K.Q. as having both chronic pain and fibromyalgia and gave her prescriptions for 60 OxyContin 40 mg. (BID) and 90 Valium 10 mg. (TID).[75] *Id.*

Sixteen days later, on March 18, K.Q. returned and "complain[ed] of severe pain for past 2 weeks" and reported that she had been "taking extra medications, including extra Valium and OxyContin." *Id.* Respondent's physical exam found that she had "multiple areas [of] pain and tenderness to palpation." *Id.* Respondent doubled the dosing of the OxyContin 40mg. to two tablets every twelve hours; the progress note does not, however, indicate how many tablets she prescribed. *Id.* Respondent also gave her a prescription for 120 tablets of Valium (TID and HS). *Id.*

On March 27, K.Q. complained that she had not voided or had a bowel movement in three days. *Id.* Respondent found her bladder distended and referred her to an emergency room for a bladder catheterization and evaluation. *Id.* at 10. On March 31, K.Q. returned and told Respondent that she "believe[d] that the nurse took her OxyContin." *Id.* Respondent gave her a new prescription for 180 OxyContin 40 mg. (q8h), as well as for 30 Halcion (triazolam), a schedule IV controlled substance. 21 CFR 1308.14(c).

On April 14, K.Q. wanted to try a medication other than OxyContin because she thought it caused nausea, vomiting and headaches. *Id.* at 10. According to Dr. Hare, "it would be unusual for [a] patient to suddenly start having side-effects after 6 months of treatment with the medication." GX 46A, at 4. K.Q. also told Respondent that she was changing to an insurance plan that "would not pay for the OxyContin," GX 58, at 11; and that she had previously taken methadone. *Id.* Respondent then wrote K.Q. a prescription for methadone 10 mg. "2 tabs QID" (eight tablets a day) but did not indicate in the patient record the quantity. *Id.* Respondent also gave her a prescription for another 120 tablets of Valium. *Id.* There is no indication, however, that Respondent questioned K.Q. regarding her prior use of methadone; whether it was prescribed to her, and if so, who treated her; why was she taking it (methadone is prescribed both for pain and detoxification/maintenance treatment); and when she had previously taken it.

K.Q. next visited on May 1, and reported that she was taking up to 120 mg. methadone per day, one and one-half times the prescribed daily dose. *Id.* Although K.Q. reported that she was "doing better" on the methadone, and the physical exam found she had less distress, less pain with lumbar ranger of motion and ambulation, Respondent gave her a prescription for 300 tablets and doubled her dose to four tablets, four times a day. *Id.* She also wrote her a prescription for 120 Xanax 1 mg. "TID" (a forty-day supply if taken as directed) and noted that K.Q. would discontinue use of Valium. *Id.*

On May 20 (nineteen days later), Respondent again wrote K.Q. a prescription for 120 tablets of Valium 10 mg. "QID." *Id.* at 12. Respondent did not indicate in the progress note why she was switching K.Q. back to Valium. *Id.* Respondent also wrote K.Q. another prescription for 300 methadone 10 mg. *Id.*

On June 5, K.Q. reported that while she was taking the recommended dosage of four tablets, four times a day, she had only ten Methadone tablets remaining. *Id.* K.Q. told Respondent that "she believe[d] some workmen may have 'gotten into' her medications." *Id.* Once again, there is no indication that Respondent questioned K.Q. as to how this could have happened. *Id.* Respondent counseled K.Q. that "she needs to lock up her medications," and K.Q. agreed to. *Id.* She then wrote K.Q. another prescription for 300 tablets of methadone 10 mg. "4 tabs QID." *Id.*

On June 19 (two weeks later), K.Q., who had recently twisted her ankle, wanted to switch off of methadone. *Id.* at 16. Apparently, another doctor told K.Q. that because she had pseudotumor cerebri, methadone could cause a side effect. *Id.* K.Q. also told Respondent that she would like to switch to MS Contin, because she could not afford OxyContin. *Id.*

Respondent performed a physical exam and found that K.Q.'s right ankle had slight swelling and that she had "severe numbness of [her] right lateral thigh and lateral calf." *Id.* Respondent noted her impression as "post mild right ankle sprain." *Id.* Respondent also diagnosed K.Q. as having "chronic numbness right lower extremity secondary to right lumbar radiculopathy vs myofascial pain," *id.,* but according to Dr. Hare, there was no evidence in the chart to support the diagnosis. GX 46A, at 5. Respondent wrote K.Q. a prescription for 180 tablets of MS

[74] At K.Q.'s March 17 visit, Respondent noted that she was taking Prozac, a non-controlled drug prescribed for depression. It does not appear that Respondent attempted to contact whoever had treated K.Q. with the Prozac.

[75] Respondent also gave her a prescription for Zanaflex.

Contin 60 mg. "2 tabs q8h," a thirty-day supply. GX 58, at 16.

Three days later, K.Q. told Respondent that "they only filled 100 of the MS Contin." *Id.* Respondent did not, however, document the reason for the partial filling. *Id.* K.Q. also told Respondent that she was taking 3–4 tablets every eight hours, one and one-half to twice the prescribed dose. *Id.* There is no indication in the record that Respondent counseled K.Q. regarding her self-escalating the dose of the medication or that she questioned her as to whether it was necessary to address her pain. *Id.* Respondent then gave K.Q. another prescription for MS Contin 100 mg. "2 tabs q8h #180," a thirty-day supply. *Id.* at 16–17.

On July 10, K.Q. returned to Respondent and told her that her left knee had gone out thirteen days earlier. *Id.* at 17. K.Q. told Respondent that she had seen Dr. H.'s physician assistant, who told her to wear a knee brace and stay on bedrest for four weeks. *Id.* K.Q. also told Respondent that she would see Dr. H. on July 20. *Id.* Respondent performed a physical exam on K.Q.'s knee and found slight swelling and that she had severe pain with knee range of motion. *Id.* Respondent concluded that K.Q. had possibly re-injured her meniscus and injected her knee with a combination of Marcaine and Depomedrol. *Id.* She also gave her new prescriptions for 240 tablets of MS Contin 100 mg., which increased the dosing to two tablets every six hours (from every eight hours) and a prescription for 120 Valium (one tablet four times a day). *Id.*

Less than two weeks later, on July 23, K.Q. complained that she had had "a bad last few weeks and request[ed] increasing her MS Contin." *Id.* Respondent gave her another prescription for 240 tablets of Ms Contin 100 mg. and increased the dosing to three tablets every six hours. *Id.* Yet even at this increased dosing, the prescription issued on July 10 should have lasted another week. *Id.*

The following day, K.Q. saw Respondent and complained of severe knee pain. *Id.* at 17–18. K.Q. told Respondent that she had been to the emergency room twice in the last three weeks because of the dislocation of her left patella (she had not mentioned an ER visit at her July 10 visit with Respondent). *Id.* at 17. K.Q. also told Respondent that Dr. L. had advised her that she was "not a candidate for [a] cartilage transplant."[76] *Id.* at 18. Once again, there is no indication that Respondent contacted the doctor who had evaluated K.Q. to determine what treatment he had recommended and whether he had prescribed any controlled substances for her knee pain.

On August 6, K.Q. called Respondent and complained of "severe headaches and pain" and requested an "increase in her MS Contin and [a] change to Xanax." *Id.* at 17. She also "complain[ed] of symptoms of pseudotumor." *Id.* Respondent wrote her a prescription for 120 tablets of MS Contin 100 and increased the dosing to six tablets every eight hours (a fifty percent increase); she also wrote K.Q. a prescription for 150 Xanax (1 mg. q6h and 2 mg. qhs). *Id.* at 19. Respondent wrote K.Q. additional prescriptions for 120 MS Contin 100 (with the same dosing) on August 14, 20, and 27.[77] *Id.*

On the latter date (Aug. 27), Respondent also wrote K.Q. a prescription for 120 Valium (TID and HS) with one refill. *Id.* Respondent did not, however, indicate in the record why K.Q. was being switched back to Valium. *Id.* On September 25, Respondent wrote K.Q. another prescription for 120 Valium (QID—a thirty day supply) even though the August 27 prescription had included a refill. *Id.* at 20. Respondent did not indicate in the record why K.Q. already needed more Valium.

On October 5, K.Q. indicated that she had "been taking extra MS Contin for her headaches." *Id.* Respondent again increased her prescription to 336 tablets of MS Contin 100 mg., with a dosing of eight tablets every eight hours, a two-week supply. *Id.* at 20.

Nine days later, on October 14, K.Q. reported taking the MS Contin "every 6 hours instead of every 8" and that she had "only 4 tabs left." *Id.* at 21. As Dr. Hare observed, K.Q.'s consumption of MS Contin indicated that she was taking 37 pills a day, and not the 24 tablets that Respondent had prescribed and was even in excess of what K.Q. had told her (32 per day). GX 46A, at 5.

Respondent's response to this information was to give K.Q. a prescription for 600 tablets of MS Contin 100 mg. and to increase the dosing to ten tablets every eight hours. GX 58, at 21. Moreover, while the previous Valium prescription (which Respondent wrote on September 25), should have lasted another eleven days, Respondent wrote K.Q. another prescription for 120 tablets (QID), increasing the dosing from four to six tablets per day. *Id.*

Two weeks later, K.Q. was back and complaining of "severe headaches," "vomiting up the medications," and severe knee pain because she had "hit her left knee against the dashboard." *Id.* K.Q. also complained that she was taking generic MS Contin, and that it was "much weaker than the brand MS Contin" and that she had "to take much more of these to get any effect." *Id.* Respondent issued her another prescription for 600 tablets of MS Contin 100 mg.; while the note states "12 tabs," it does not indicate the frequency. *Id.* Respondent also gave her a prescription for 90 tablets of Xanax 1 mg. (TID). *Id.* Once again, there was no indication as to why Respondent was changing K.Q. back to Xanax. *Id.*

On November 5, K.Q. was back and told Respondent that she had received only 400 tablets of MS Contin. *Id.* at 22. Respondent further noted that K.Q. had brought "in the bottle of the MS Contin and she has at least 100 left." *Id.* Respondent wrote her a prescription for 200 tablets of methadone 10 mg., with four tablets to be taken every six hours, to last "for approximately 11–12 days." *Id.* Respondent also wrote a prescription for 120 tablets of Valium, with two tablets to be taken every eight hours, and with two refills. *Id.* Again, Respondent did not indicate why she was changing from MS Contin to methadone and from Xanax (which had been prescribed just a week earlier) back to Valium.

On November 18, K.Q. returned and complained that the methadone did not "help as much as the MS Contin" and made her more tired. *Id.* Respondent gave her two prescriptions for 300 tablets of MS Contin 100 mg., one of which was dated November 18, the other being dated November 25. *Id.* Respondent gave K.Q. additional MS Contin prescriptions until December 31, when she told Respondent that "she would like to try the OxyContin again because it helps with the headaches." *Id.* at 24. Respondent had not prescribed OxyContin since March 31st (nine months earlier) and on April 14, had discontinued prescribing the drug when K.Q. complained that it was causing headaches. *See id.* at 10. Respondent wrote K.Q. prescriptions for 180 tablets of OxyContin 40 mg (three tablets every eight hours); 300 tablets of a extended-release morphine 100 mg. (twelve tablets every eight hours), and 100 Valium 10 mg., (two tablets TID) with two refills. *Id.* at 24. This represented a

[76] During a physical exam, Respondent found that K.Q. showed eversion of her left eye and Respondent diagnosed her with an "exacerbation of pseudotumor" in addition to degenerative joint disease in her left knee. GX 58, at 18. Respondent sent her to the emergency room where she had a spinal tap. *Id.*

[77] Respondent wrote K.Q. additional prescriptions for 270 tablets of MS Contin 100 mg. on September 2 and 25 with the same dosing of six tablets every eight hours. GX 58, at 20.

fifty-percent increase in K.Q.'s intake of morphine alone (not to mention the oxycodone), and yet there is no indication in the progress note that K.Q. had complained that her pain was worse. *Id.*

On January 11, 1999, Respondent gave K.Q. two additional prescriptions for 300 tablets of extended release morphine 100 mg. (with the same dosing), as well as a trial 100 milligrams of morphine elixir for headaches. *Id.* Notwithstanding that only eleven days earlier she had given K.Q. a prescription for 100 Valium with two refills, she also wrote a prescription for 100 Xanax 1 mg. (two tablets, three times a day) with one refill. *Id.*

Respondent issued K.Q. additional prescriptions for extended release morphine on January 26 and February 3, and for 60 OxyContin on the latter date. *Id.* at 24–25. On February 11, Respondent wrote additional prescriptions (dated Feb. 11 and 18) for 300 tablets of MS Contin 100 mg. (twelve tablets every eight hours) and for 100 tablets of Xanax 1–2 tablets three times a day PRN with one refill. *Id.* at 25. On March 4, Respondent switched K.Q. back to Valium but did not indicate how many tablets she prescribed. *Id.* at 26. She also wrote two more prescriptions for 300 tablets MS Contin. *Id.*

On March 18, Respondent wrote K.Q. two more prescriptions for 300 MS Contin 100 mg., as well as 100 tablets of OxyContin 40 mg. (one tablet every twelve hours). *Id.* at 27. While Respondent indicated at this visit that K.Q. "had a bad headache," the progress note does not state that this was medical justification for the new OxyContin prescription. *Id.* at 26–27. K.Q. was not, however, able to fill the prescription "because of insurance" and returned it to Respondent at her next visit (March 30). *Id.* at 27. On this date, Respondent wrote her two more prescriptions for 300 tablets of MS Contin 100 mg. (12 q8h, or 36 tablets per day), and a prescription for 50 milliliters of morphine elixir 20mg./5ml. *Id.* As Dr. Hare noted, by this point K.Q. was taking 50 tablets per day of MS Contin. GX 46A, at 6.

Respondent continued to prescribe both MS Contin and morphine elixir to K.Q. over the ensuing months, along with additional prescriptions for either Xanax or Valium. *See* GX 58, at 33–38.[78] On September 30, however, Respondent began prescribing methadone 10 mg. again (three to four tablets, four times a day) when K.Q. claimed that she could not find generic MS Contin because it was no longer being manufactured. *Id.* at 38.

On October 7, K.Q. reported that she was "[d]oing better" and "without side effects," *id.* at 39, even though the methadone was prescribed at "a dose far less than that of MS Contin." GX 46A, at 6. While K.Q. had reported that she was "[d]oing better," Respondent increased the dosing to four to five tablets, four times a day. GX 58, at 39. However, on November 8, K.Q. complained that the methadone made "her too fatigued." *Id.* Respondent went back to prescribing MS Contin 100 mg. (300 tablets, with twelve tablets to be taken every eight hours) and gave her prescriptions which were dated November 8 and 15. *Id.* at 40. According to the Government's expert, the MS Contin dose "would have 6 times the analgesic effect as the methadone" K.Q. had been switched from. GX 46A, at 6.

Nine days later, K.Q. complained of severe headaches and Respondent gave her more prescriptions for 300 tablets of MS Contin 100 mg., as well as for 100 tablets of immediate-release morphine 30 mg., one tablet every two hours as needed for breakthrough pain. *Id.* at 137. Respondent wrote additional prescriptions for these drugs on December 1 and 21. *Id.* at 138. In addition, on December 21, Respondent wrote a prescription for 270 tablets of OxyContin 80 mg., with a dosing of three tablets every eight hours. *Id.*

In early February, K.Q. told Respondent that her insurance would not cover the MS Contin. *Id.* at 48. Respondent resumed prescribing methadone 10 mg., and wrote her a prescription for 300 tablets with a dosing of four tablets, four times a day. *Id.* This again was at a dose that was "much lower tha[n] that of the MS Contin." GX 46A, at 7. At the next visit (Feb. 16), K.Q. was nonetheless "OK on the [m]ethadone now." GX 58, at 48. Respondent gave her another prescription for 300 methadone (as well as one to be filled on March 2) and additional prescriptions for 200 immediate-release morphine (1 q2h) and for 180 Valium (2 TID) with three refills. *Id.*

At her next visit (March 13), K.Q. reported that she was taking eight tablets, three times a day, which was a fifty-percent increase over the prescribed daily dosing. *Id.* Respondent increased the dosing of her prescription to the amount she was taking and gave her two prescriptions for a total of 600 tablets, as well as two prescriptions for a total of 200 tablets of immediate-release morphine. *Id.* at 49.

This basic pattern of prescribing methadone, Valium, and immediate-release morphine continued until June 19 when K.Q. told Respondent that "she is going to discontinue MS Contin and wants Percocet." *Id.* at 50. K.Q. had not, however, received an MS Contin prescription from Respondent in four to five months. *Id.* at 48. Respondent did not further question K.Q. about whether she had continued to use MS Contin and wrote her a prescription for 100 Percocet. *Id.* at 50.

Over the next four months, Respondent continued to prescribe methadone, Percocet, and Valium to K.Q. *Id.* at 50–53. With respect to the Percocet, Respondent gave K.Q. prescriptions for 100 tablets on September 6, 11, 18, and 25, as well as on October 2, 9, 16, 23, and 30. *Id.* at 51–53. The size and frequency of the prescriptions suggest that K.Q. was taking 100 tablets every seven days and fourteen tablets a day, and consuming 4643 mgs. of acetaminophen a day, an amount well in excess of the

[78] On April 29, Respondent wrote K.Q. a prescription for 120 tablets of Xanax 1 mg., with two tablets to be taken twice a day (a thirty-day supply). GX 58, at 33. On May 12, Respondent was back to writing her a prescription for Valium 10 (2 tabs TID) with 2 refills, but did not indicate the quantity. *Id.* at 34. On August 19, Respondent wrote an additional Valium prescription for 100 tablets (two tablets, three times a day) with three refills. *Id.* at 38. Two weeks later (on September 3), she wrote another prescription for 100 tablets of Valium 10, with the same dosing, with three refills. *Id.* On September 13, Respondent went back to writing K.Q. a prescription for 120 tablets of Xanax 1mg. (two tablets, two times a day) with two refills. *Id.* Again, no reason was stated for changing from Valium to Xanax. *See id.* On September 29, a pharmacy called to clarify the dosing of the Xanax; Respondent told the pharmacist to change it back to two tablets, three times a day. *Id.* On October 25, Respondent was back to prescribing 100 Valium (two tablets, three times a day) with three refills. *Id.* at 39. Again, no reason was stated for the change. *Id.* While this prescription with refills should have lasted 66 days, on December 1, Respondent gave her a prescription for 100 Xanax 1 mg. (2 tablets TID) with two refills. *Id.* at 40, 138.

On December 21, Respondent wrote K.Q. a prescription for 180 tablets of Valium 10 mg. (2 tabs TID), with three refills. *Id.* While on January 7 K.Q. told Respondent that she had not filled the prescription and obtained a prescription for another 180 tablets (2 TID) with three refills, even if this was true, no explanation was given for why the prescription was issued given that she had issued a Xanax prescription three weeks earlier. *Id.* at 41, 138–39.

On February 16, notwithstanding that the January 7 prescription and refills should have lasted four months, Respondent gave K.Q. another prescription for 180 tablets of Valium at the same dosing with the three refills. *Id.* at 48. Moreover, on April 25, Respondent gave K.Q. another prescription for 180 tablets of Valium at the same dosing with three refills even though the February 16 prescription should have lasted until the middle of June. *Id.* at 50. This was followed by a May 12 prescription for 180 Valium (2 TID), *id.,* and a July 14 prescription for 100 tablets with a dosing of 1–2 tablets twice a day and three refills. *Id.* at 50–51. On September 18, Respondent wrote K.Q. another prescription with the same quantity, dosing and refills, as the July 14 prescription. *Id.* at 52.

recommended daily maximum of 4000 mgs.

Moreover, on October 30, Respondent prescribed (in addition to the Percocet and methadone) 20 tablets of Demerol (meperidine), another schedule II opiate. *See* 21 CFR 1308.12(c)(18). GX 58, at 53. The progress note, however, contains no explanation as to why the Demerol prescription was medically necessary. *Id.*

Two days later on November 1, K.Q. was admitted to St. Mary's Hospital behavioral health unit "for [a] psychotic episode" and was "manic, rambling, labile, tearful and with auditory hallucinations." *Id.* According to the report documenting her admission, Catalina Behavioral Health had sent her to St. Mary's and upon her admission, K.Q. "said [that] she cannot stop crying," "present[ed] with pressed speech, flight of ideas," was "very difficult to interview," and needed a psychiatric evaluation. RX Z, at 1.

Relatedly, the discharge summary noted that K.Q. had been referred by Catalina because she "had been progressively becoming agitated, over talkative, confused, disorganize[ed] [in] thought, rambling in her speech, and unable to sleep." *Id.* at 3. The report from Catalina was that K.Q. "has been self medicating and this is contributing to her mood transient problems." *Id.*

The discharge summary stated that K.Q. had "denie[d] previous psychiatric hospitalization except for one time that she was admitted at the Westchester when she had attempted to quit narcotics back in 1997." *Id.* While K.Q. apparently denied the use of alcohol and recreational drugs and maintained that her opiates had been prescribed by Respondent and another doctor, she also reported "being seen in pain clinics and didn't want to elaborate any further." *Id.* at 4.

The report further noted that while she was hospitalized, K.Q. engaged in "some medication seeking behavior." *Id.* at 5. In addition, the summary reported that "[t]he patient admits to being cognizant that her narcotics are a lot; she wants to try to get off of them, however not at the expense of being in pain."[79] *Id.* at 4.

As to this incident, Respondent testified that "the staff believ[ing] [K.Q.] was overmedicated" was not mentioned in the phone call from the unit or in the hospital's record. Tr. 2106. Apparently, the statement at the bottom of the first page of the discharge summary "that the patient has been self medicating and this is contributing to her mood transient problems" and the diagnosis that her dramatic mood swings were "probably secondary * * * to opioids on extreme high doses" did not express the staff's belief with sufficient clarity. RX Z, at 1 & 5.

Respondent also maintained that the hospital maintained K.Q. on her pain medications. Tr. 2106; *but see* RX Z, at 5 ("For the time being we will continue patient on similar narcotic medications," and suggesting a "pain medical consult for issues regarding her pain management"). Given the short amount of time K.Q. was hospitalized (approximately five days), it is not as if the hospital had the time to try to taper her intake of the drugs.

On November 13, K.Q. went back to see Respondent. GX 58, at 53. While the progress note contains a brief discussion of her stay in the hospital, there is no indication that Respondent asked her about "the cause of the hospitalization even though the symptoms [she] experienced could have been caused by excessive medication or withdrawal from medication." GX 46A, at 7. At the visit, Respondent prescribed Demerol (20 tablets), Percocet (100 tablets) and methadone 10 mg. (200 tablets) (when a prescription for 100 methadone 40mg. could not be filled). GX 58, at 53.

Respondent prescribed these three drugs on November 21 and 29, as well as on December 6; on December 12, she wrote for 100 Percocet and more Demerol. *Id.* at 53–54. The next day, Respondent wrote K.Q. a prescription for 100 oxycodone. *Id.* The note does not indicate the reason for the prescription, the strength, or the dosing. *Id.* at 54. Moreover, on December 19, Respondent wrote K.Q. additional prescriptions for 100 tablets of Percocet and OxyContin. *Id.* Again, the note did not indicate the reason for the OxyContin, the strength, or the dosing.

On January 15, Respondent noted that she had talked with K.Q.'s parents "regarding [her] overuse of medications and * * * sedation." *Id.* at 55. Respondent initially agreed to prescribe only two to four days of medication at a time. *Id.*

On January 18, Respondent prescribed 30 tablets of Dilaudid (QID), another schedule II drug, a seven-day supply based on the dosing. *Id.* at 56. Once again, Respondent did not indicate the reason for prescribing the drug. *See also* GX 46A, at 7. Moreover, on February 20, Respondent increased the dosing of the Dilaudid to four tablets, four times a day, a four-fold increase. *Id.* Again, there was no explanation for the increase in the dosing. GX 58, at 55.

Respondent continued to prescribe methadone, Roxicodone, Dilaudid, Valium, and Xanax[80] throughout most of 2001. On October 3, K.Q. complained of increased neck pain and increased the dosing of the Roxicodone from four to six tablets to eight to ten tablets every four hours (and gave her two prescriptions for a total of 600 tablets) and added a prescription for 60 tablets of MSIR (morphine sulfate immediate release, one tablet every four hours PRN). *Id.* at 62.

On October 9, K.Q. returned and reported that four days earlier she had been in an automobile accident in which her car's "[a]irbags deployed." *Id.* at 62. K.Q. complained of bruising of her upper extremities and that her pain had increased; K.Q. was wearing a knee brace. *Id.* at 63. Respondent performed a physical exam which found K.Q. "awake and alert" and with "minimal stiffness with cervical range of motion." *Id.* Respondent did not, however, indicate that she observed any bruising on K.Q. *See id.* Respondent concluded that K.Q. had an "exacerbation of pain" and wrote her prescriptions for 200 methadone 10 mg. (eight tablets, three times a day) and for 120 tablets of MSIR 39 mg. (one tablet every four hours as needed for pain), as well as for ninety Xanax (q8h) with three refills. *Id.*

Three days later, Respondent gave K.Q. another prescription for 200 methadone 10 mg., with the same dosing, even though the previous prescription should have lasted until October 17.[81] *Id.* On October 18, K.Q. again saw Respondent, whose only finding on physical examination was that she had "slight pain and stiffness with cervical range of motion." *Id.* Respondent gave K.Q. prescriptions for 400 tablets of methadone 10 mg. (with

[79] The psychiatrist diagnosed K.Q. as having "[u]nresolved issues related to the death of her child," "[n]oncompliance with treatment," "[u]ntreated depression," and "[d]ramatic mood swings, probably secondary to untreated depression and PTSD in addition to opioids on extreme high doses." RX Z, at 5.

[80] On August 9, Respondent gave K.Q. a prescription for 100 Valium 10mg. (q4h) with five refills. GX 58, at 61. On October 9, four days after K.Q. reported that she had been in what appears to have been a minor automobile accident (given the limited findings of Respondent's physical exam and the fact that she did not change the dosing of K.Q.'s pain medications), Respondent discontinued the Valium and gave her a prescription for 90 Xanax 1 mg. (q8h) with three refills. *Id.* at 62–63. Only nine days later, Respondent gave K.Q. another Xanax 1mg. prescription, which was for 60 tablets with two refills and which doubled the dosing to two tablets every eight hours PRN. *Id.* at 63. There is no indication, however, as to whether she contacted the pharmacy that dispensed the October 9 prescription to cancel the refills. *Id.* Moreover, while the October 18 prescription with its refills should have lasted thirty days, on November 6, Respondent wrote K.Q. another prescription for 180 tablets (at the same dosing) with three refills. *Id.* at 64.

[81] Respondent also wrote K.Q. a prescription for 200 Roxicodone (8–10 q4h) at this visit. *Id.*

the same dosing of eight tablets, three times a day), 200 tablets of MSIR 30 mg. (with an increased dosing of one tablet every three hours), 400 tablets of Roxicodone, and another 60 tablets of Xanax (which doubled the dosing to 2 q8h) with two refills. *Id.* Respondent did not indicate why she was increasing the dosing of the Xanax and the MSIR. *Id.* Nor did she indicate why it was medically necessary to issue another MSIR prescription when the previous prescription should have lasted until October 29. *Id.*

On November 6 and 19, Respondent wrote K.Q. additional prescriptions for 200 and 100 tablets of MSIR 30 mg. (q3h), respectively. *Id.* at 64. As the October 18 prescription should have lasted at least until November 12, the November 6 prescription was six days early. And as the November 6 prescription should have lasted at least until December 1, the November 19 prescription was twelve days early.

On December 20, 2001, another of Respondent's patients, who performed security at the apartment complex where K.Q. lived, told Respondent that K.Q. "is selling her meds to people in her apartment complex." *Id.* at 65. This person further stated that "several people have told her that [K.Q.] has approached them with drugs to sell, and this is an ongoing problem." *Id.* According to the patient record, "the complex [was] considering action." *Id.* Later that day, Respondent wrote K.Q. a letter terminating her as a patient. *Id.*

In summarizing his findings regarding Respondent's treatment of K.Q., Dr. Hare observed that K.Q.:

> Was prescribed control[led] substances without adequate evaluation or followup. There were many indicators that she was consistently over-using her medication and yet [Respondent] took no steps to correct this. In fact she prescribed more medication. Despite warnings that the patient was over medicated, Respondent continued to prescribe[] unabated. Respondent never took steps to control K.Q.'s medication use or to even do blood or urine tests to establish that she was in fact taking the medication. Reports of diversion that [Respondent] received should have come as no surprise, yet [Respondent] seemed oblivious that [K.Q.] was misusing her medication. Clearly this is substandard care. [Respondent's] prescribing encouraged overuse and/or diversion of medication.

GX 46A, at 7–8.

Respondent's Efforts at Rehabilitation

Pursuant to the consent agreement she entered into with the Arizona Medical Board, Respondent took ten hours of Continuing Medical Education (CME) in the principle and practice of pain management or addiction medicine. RX 53, GX 73. Respondent also took an additional 51.25 hours of CME in a range of topics related to pain management. RX 53.

In 2002, in response to the State's Board investigation, Respondent also entered an arrangement under which Dr. Schneider mentored her. Tr. 808. More specifically, over a period of several months, Dr. Schneider met with Respondent on a weekly basis to review the medical records of those patients she had seen that week and to whom she had prescribed opioids. *Id.* Dr. Schneider advised her as to how to improve her documentation and management of these patients. RX K–1, at 2. Dr. Schneider testified that she now considered Respondent to be "one of the most knowledgeable people about addiction issues in the community." Tr. 812.

Respondent testified that in the event she was granted a new registration, she would limit her practice to musculoskeletal pain and would use opioid risk assessment tools and addiction histories to evaluate her patients. *Id.* at 2412. Respondent also testified that she "intended to use urine drug screening a lot more frequently" and that she would continue to consult with Dr. Schneider regarding her patients.[82] *Id.*

At the hearing, Respondent also submitted a list of 29 patients she had fired. *See* RX 37. However, all but six of the patients were fired after the Medical Board began investigating her.[83] *See id.*

Moreover, substantial portions of Respondent's testimony undercut her claim that she has reformed. For example, while Respondent testified that she was not saying "that each and every prescriptions I ever write is 100 percent perfect," that "my medical records are perfect or fully comprehensive," and that "there wasn't room for improvement on my part," as noted above, she emphatically denied having done anything wrong with respect to any of the prescriptions she issued to H.T. Tr. 2305–06. Relatedly, she also denied that she falsified H.T.'s medical records.

Moreover, her testimony regarding several other issues raises serious questions as to what she has learned from this experience. With respect to patient S.R., who admitted to taking her deceased husband's controlled substance medications, Respondent testified that she "did not see that it would cause any potential harm to" her. *Id.* at 2353. Speaking generally of a person taking a controlled substance that had been prescribed not to them but to a spouse, she testified:

> There's just continuing medical care, and to me, it seems no harm to the patient, I might add. I've never seen an example where bad came, any harmful outcome, but I see it time and time again, dozens of times.

Id. at 2395.

Later, Respondent added:

> Our party line as a physician is don't take anyone else's prescriptions, period, whether it's controlled or not controlled. Of course, I know at issue here is only controlled, and then controlled has an extra layer on top of it, meaning it's a felony to do it. But really as a physician, from a medical standpoint, it refers to all prescriptions.
>
> The party line is don't use anyone else's prescriptions, don't use expired medications, et cetera, et cetera, but the fact is people do use each other's prescription medications, and almost always there's no harm because people know * * * They know what they are taking. People develop, certainly develop, an area of knowledge about their medications.

Id. at 2400–01.

Moreover, when asked by the Government whether she had "often issued early refills on prescriptions without documenting the reason why?," Respondent answered:

> The record speaks for itself there, and there are many reasons why a prescription is not filled on, for instance, the thirtieth day on a 30-day supply. The definition [of] early refill, if a persons says, well, if you go to the pharmacy on day 29, that's considered an early refill, so the definition of early refill is questionable and not clear and not well-agreed upon. So it would be difficult for me to answer that question unless you are defining for me terms such as that.

Id. at 2345.

Relatedly, when asked a follow-up question as to whether she had a definition of the term "early refill," Respondent answered:

> No, not really. It was a DEA term, early refill. With physicians, there never was any lesson about early refills in medical school. That's not anything that was covered, so no, I have no definition.

Id. at 2346. Apparently, Respondent had not asked Dr. Schneider to explain what the term means, even though the latter had noted with respect to six of the patient files she reviewed that they "all received early refills without adequate

[82] Dr. Schneider testified that she had volunteered to mentor Respondent for three years in connection with a settlement offer that was made in the course of these proceedings and that she would be willing to mentor Respondent for three years as a condition of her receiving her DEA registration. Tr. 860–62.

[83] Moreover, most of the patients' records are not in the record and thus the circumstances prompting the firings (and whether Respondent ignored any earlier warning signs) are not established. Accordingly, to the extent Respondent offered this document as evidence that she is capable of properly monitoring her patients, it is of limited probative force.

documentation and explanation." RX K–1, at 6.

Respondent also disagreed that she had "ignored the fact that some of [her] patients had addiction histories." *Id.* at 2348. Finally, she "absolutely disagreed" that she had "ignored warning signs that a patient might be" addicted to, or abusing drugs. *Id.* at 2348–49.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that "[t]he Attorney General may deny an application for [a practitioner's] registration if he determines that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

"[T]hese factors are * * * considered in the disjunctive." *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for a registration should be denied. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). The Government bears the burden of proving that the requirements for registration are not satisfied. 21 CFR 1301.44(d).

Having considered all of the factors, I conclude that the Government has made out a *prima facie* case that issuing Respondent a new registration would be inconsistent with the public interest. In particular, I conclude that the Government's evidence with respect to Respondent's experience in dispensing controlled substances (factor two) and record of compliance with applicable controlled substance laws (factor four), is far more extensive than the ALJ acknowledged it to be and establishes numerous instances in which Respondent improperly dispensed controlled substances. While in some instances, Respondent may have been only gullible or naive, in other instances (H.T.) she engaged in intentional diversion as well as falsified medical records or acted with deliberate ignorance of a patient's real purpose in seeking the prescriptions. While I have carefully considered all of Respondent's various contentions, including her evidence that she has reformed her prescribing practices, I conclude that Respondent has not rebutted the Agency's *prima facie* showing because she has refused to acknowledge her wrongdoing with respect to her most egregious acts.

Factor One—The Recommendation of the State Licensing Board

While Respondent has twice been sanctioned by the Arizona Medical Board for unprofessional conduct including the improper prescribing of controlled substances, it is undisputed that she currently holds an active State license. The Agency has long held, however, that a practitioner's reinstatement by a State board "is not dispositive" because "DEA maintains a separate oversight responsibility with respect to the handling of controlled substances and has a statutory obligation to make its independent determination as to whether the granting of [a registration] would be in the public interest." *Mortimer B. Levin,* 55 FR 8209, 8210 (1990); *see also Jayam Krishna-Iyer,* 74 FR 459, 461 (2009).

Respondent also relies on a letter from a Senior Compliance Officer with the Arizona Board which states that she "has the Board's support to pursue her DEA reinstatement." RX 53; *see also* Resp. Br. 157. Continuing, the letter stated that Respondent "at no time attempted to divert medications for non-medical purposes." RX 53. Even assuming that the letter represents the official view of the Board (and not simply the view of one of its employees), the evidence presented in this proceeding establishes that Respondent engaged in far more egregious conduct than the evidence which apparently was presented to the Board. I thus conclude that, at most, this factor is entitled to nominal weight in the public interest analysis.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

Under a longstanding DEA regulation, a prescription for a controlled substance is not "effective" unless it is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). This regulation further provides that "[a]n order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances." *Id.* As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135 & 143 (1975)).

While many cases under the public interest standard involve practitioners who violated the prescription requirement and did so intentionally, the Agency's authority to deny an application (or to revoke an existing registration) is not limited to those instances in which a practitioner intentionally diverts a controlled substance. *See Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998). As my predecessor explained in *Caragine:* "Just because misconduct is unintentional, innocent or devoid of improper motivation, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify" the revocation of an existing registration or the denial of an application for a registration. *Id.* at 51601. A practitioner's failure to properly supervise her patients to prevent them from personally abusing controlled substances or selling them to others constitutes conduct "inconsistent with the public interest" and can support the denial of an application or the revocation of an existing registration. *Id.; see also Gonzales,* 546 U.S. at 274.

The ALJ concluded that the Government had proved that Respondent's prescriptions to H.T. were "not issued for a legitimate medical purpose." ALJ at 150. I agree and note that, at no time during any of his visits with Respondent occurring between February and April 2002, did H.T. complain that he was in pain. On six occasions, however, Respondent gave H.T. prescriptions for schedule II narcotics including Percocet 10, Roxicodone (oxycodone) in both five-

and fifteen-mg. strength, and OxyContin in both twenty- and forty-mg. strength.

Substantial evidence also supports the conclusion that Respondent knew that H.T. was not seeking the drugs to relieve pain but to abuse them. Respondent did not perform a physical exam of H.T. at any of the visits at which she issued the prescriptions, yet falsified H.T.'s medical records to indicate that she had done so. Moreover, in addition to his failure to ever complain of being in pain, H.T. made numerous statements which made clear that he was seeking the drugs to abuse them.

These included, *inter alia:* (1) H.T.'s statements that he liked oxycodone but was eating them "like M & Ms" or "candy"; (2) that he would be "happier with fifteens"; (3) that an acquaintance had told him that he had "gotta try and get her to give you some * * * OxyContin"; (4) that he was "hopin[g] you'd give me a hundred" tablets of OxyContin; (5) "My back feels great, but I like these" and asking "is that a bad thing?"; (6) "Doc, you know between you and me my pain level is non-existent, but I really like them Oxy[C]ontin. They make me feel good"; (7) "I'd never tell you none of them stories about losing 'em or anything. I just tell ya the truth. I'd just like a few more of those, okay?"; (8) H.T. relating that he had asked someone on the street in Nogales, Mexico about buying OxyContin and stating the price per milligram.

Finally, Respondent made numerous statements which show that she knew H.T. was seeking the prescriptions for non-medical reasons. These included, *inter alia:* (1) Respondent's statement that Tylenol "is a bad thing" but "the other stuff [in Percocet, oxycodone] is a fun thing"; (2) asking H.T. whether he "like[d] the Oxy[C]ontin?"; (3) asking H.T. "do you want the OxyContin?"; (4) after giving H.T a prescription for ninety OxyContin 40 mg., responding to H.T.'s statement that "You'r[e] okay, Doc," with "You caught me at a soft moment"; (5) Respondent stating that the State Board was watching her and telling H.T. to wait "until my investigation is over"; (6) Respondent stating that she could not keep prescribing to H.T. for the reasons he wanted the drugs and again telling him to wait until her investigation was over, yet prescribing 90 tablets of OxyContin 40 mg. on a subsequent visit.

As the evidence makes plain, Respondent issued H.T. six prescriptions for schedule II controlled substances which were outside of the usual course of professional practice and lacked a legitimate medical purpose. 21 CFR 1306.04(a). Moreover, Respondent clearly knew that H.T. was not seeking the drugs to treat pain, but rather to abuse them.

The ALJ concluded, however, that H.T. (and R.T.[84]) were the only patients to whom Respondent issued unlawful prescriptions. As found above, however, the patient records establish numerous other instances in which Respondent violated the CSA's prescription requirement.

Respondent gave K.Q. numerous prescriptions for both schedule II narcotics as well as schedule IV benzodiazepines. Many of these prescriptions were issued well before previous prescriptions for either the same or similar drugs would have run out if K.Q. had taken them in accordance with Respondent's dosing instructions.

For example, on December 31, 1998, Respondent gave K.Q. a prescription for 100 Valium with two refills. Based on the dosing of two tablets, three times per day, the prescription should have lasted 50 days if taken as prescribed. Yet on January 11, 1999 (just eleven days later), Respondent issued K.Q. prescriptions for 100 Xanax with one refill.

Moreover, as discussed in footnote 79, on August 19, 1999, Respondent wrote K.Q. a prescription for 100 tablets of Valium with three refills and thus authorized the dispensing of 400 tablets. Based on the dosing of two tablets, three times a day, the prescription with refills should have lasted approximately 66 days. Yet on September 3 (only fifteen days later), Respondent wrote K.Q. another prescription for 100 tablets of Valium with three refills and the previous dosing. Ten days later, Respondent wrote K.Q. a prescription for 120 tablets of Xanax with two refills and a dosing of two tablets, two times a day. Respondent did not indicate why she was switching from Valium to Xanax. While Respondent changed the dosing of the Xanax to two tablets, three times a day after being contacted by a pharmacist, even at this increased dosing the prescriptions with refills should have lasted 60 days. Yet on October 25, Respondent was back to prescribing Valium and issued K.Q. a prescription for 100 tablets (dosing at two tablets, three times per day) with three refills.

Here again, the prescriptions should have lasted approximately 66 days if taken as prescribed. Yet on December 1 (thirty-six days later), Respondent was back to prescribing 100 Xanax (two tablets, three times a day) with two refills. Not even three weeks later, however, Respondent returned to prescribing 180 tablets of Valium (two tablets, three times a day) with three refills. Again, Respondent provided no explanation for why she had changed drugs.

On January 7, Respondent gave K.Q. a prescription for another 180 tablets of Valium with the same dosing and three refills after the latter claimed that she had not filled the December 21 prescription. Respondent did not, however, inquire as to what had happened to the previous prescription. Moreover, even if K.Q. was not obtaining drugs pursuant to the December 21 prescription, the January 7 prescription should have lasted four months or until early May. Yet on February 16, Respondent gave K.Q. another prescription for 180 Valium at the same dosing with three refills (which should have lasted until the middle of June), and on April 25, Respondent gave K.Q. an additional prescription for 180 tablets with the same dosing and three refills (which ignoring all the previous prescriptions should have lasted until late August). This was followed by a May 12 prescription for 180 Valium at the same dosing, and a July 14 prescription for 100 tablets with a lowered dosing (of 1–2 tablets twice a day) but also with three refills.

Given Respondent's repeated issuance of these prescriptions, frequently months before the previous prescriptions would have run out, her prescribings cannot be attributed to negligence in failing to check K.Q.'s record. Rather, the frequency of the prescribings supports the conclusion that Respondent was deliberately ignorant as to why K.Q. was seeking the prescriptions and thus can be charged with knowledge that the prescriptions were not for a legitimate medical purpose. *See United States* v. *Katz,* 445 F.3d 1023, 1031 (8th Cir. 2006) (knowledge can be inferred when a practitioner is put "on notice that criminal activity was particularly likely and yet * * * failed to investigate those facts") (other citations and quotations omitted).

Furthermore, Respondent had other reasons to know that K.Q. was engaged in drug-seeking behavior. At the first visit, K.Q. reported that she was being treated by two other physicians, one of whom was prescribing Percocet to her, and that she was also taking Lorcet and Xanax. Respondent gave her a prescription for twenty Percocet and yet did nothing to contact these other

[84] The ALJ also found that Respondent had issued refills to R.T. which lacked a legitimate medical purpose. ALJ at 150. In light of the extensive and more egregious evidence of Respondent's prescribing to other patients, I conclude that it is not necessary to discuss R.T. further.

physicians to determine what they were prescribing and to coordinate their prescribings. Moreover, two days later, Respondent gave K.Q. a prescription for 90 Percocet based on K.Q.'s representation that there was a price-break on the drug and that she had gotten a check from a church made out for the exact amount of 90 Percocet. Respondent did not indicate in K.Q.'s record, however, why the prescription was medically necessary, and I conclude that prescription lacked a legitimate medical purpose.

K.Q. engaged in other scams to obtain drugs, including claiming that she had missed an appointment with another physician (who was prescribing OxyContin to her and either Xanax or Valium) and that the physician was out-of-town. Respondent did not, however, even bother to pick up the phone and call the doctor to determine if this was true. Respondent then prescribed OxyContin, Xanax and "Duracet," the same drugs which K.Q. had told her she was currently taking only to be told by the pharmacy that there was no such drug as Duracet. Moreover, at the next visit, K.Q. told her that she was taking "a muscle relaxant called Durect" even though Respondent had not prescribed a muscle relaxant to her. Yet this did not prompt Respondent to investigate further.

This was followed not even two weeks later by a phone call from K.Q. reporting that her purse (which contained Vicodin) had been stolen. Respondent dutifully called in a prescription for 30 Vicodin even though Respondent had not prescribed this drug to K.Q. Nor did she question K.Q. as to who the source of the Vicodin was. Moreover, two months later, K.Q. claimed that she had not mailed away a prescription Respondent had issued to her at her last visit for a three-month's supply of OxyContin, even though the last prescription before the three-month one was for a thirty-day supply, had been issued six weeks earlier, and K.Q. had reported that she taking more than the recommended dosing.[85]

Respondent thus had ample reason to know early on in her treatment of K.Q. that the latter was engaging in drug-seeking behavior. Moreover, on various occasions throughout her treatment, K.Q. reported that she had self-escalated the dosing of various narcotics. Typically, Respondent did not question K.Q. as to whether it was necessary to do so to address her pain. Notably, much of K.Q.'s problematic behavior had occurred prior to Respondent's issuance of the Xanax and Valium prescriptions discussed above.

During another period of her prescribing, Respondent gave K.Q. nine prescriptions at approximately weekly intervals for 100 tablets of Percocet, a drug which contains a minimum of 325 mg. of acetaminophen no matter what strength of oxycodone it contains. If K.Q. had consumed 100 tablets every week, she would have been taking approximately fourteen tablets and consuming 4643 mgs. of acetaminophen, an amount well in excess of the recommended daily maximum of 4000 mgs. because of its potential to cause liver toxicity. Respondent did not, however, direct that K.Q. undergo liver function tests.

Moreover, after K.Q. was hospitalized for a psychotic episode, Respondent received reports which indicated that she had seen not only Respondent and another doctor, but was also going to pain clinics and did not want to elaborate further. The discharge summary also stated that K.Q. was "self medicating" and was engaging in "some medication seeking behavior." Even after receiving this information, as well as a subsequent phone call from K.Q.'s parents reporting that she was overusing her medications, Respondent continued to prescribe to her and did nothing to monitor her use of the drugs. Respondent also gave her early refills on various drugs including methadone, MSIR, and Xanax (including a prescription which was issued for 60 tablets with two refills only nine days after giving her a prescription for 90 Xanax (q8h) with three refills). She also prescribed additional drugs (such as Dilaudid) and increased the dosing of various drugs (including increasing the dosing of Dilaudid four-fold at a single visit) without any medical justification. While Respondent eventually terminated K.Q. (more than a year after her hospitalization) after being told by another patient that she was selling her medications, it is clear that many of the controlled substance prescriptions which Respondent issued to K.Q. lacked a legitimate medical purpose and were issued outside of the usual course of professional practice. 21 CFR 1306.04(a); GX 46A, at 8.

Respondent also issued numerous prescriptions to J.R., who had previously been convicted for distributing marijuana, for schedule II drugs including methadone, 360 tablets of OxyContin 40 mg., 180 tablets of Oxycodone IR, and 200 tablets of Percodan. The medical purpose for the prescriptions was initially to treat J.R.'s migraine headaches; subsequently J.R. also complained of lower back pain.

While at the first visit in the patient file (8/25/99), Respondent issued prescriptions for OxyContin and Oxycodone IR[86] which should have lasted thirty days based on the dosing instructions, only twenty-one days later, Respondent issued additional prescriptions for the same quantities and dosing of both OxyContin 40 mg. and Oxycodone IR, and for the same quantity of Percodan. A week later, Respondent gave J.R. replacement prescriptions but gave no reason for doing so.

On October 20, Respondent issued additional prescriptions for thirty-day supplies of OxyContin 40 mg. (360 tabs) and Oxycodone IR (180 tabs), which were re-issued eight days early on November 11. While the latter prescriptions were to be sent to a Patient Assistance Program (PAP), Respondent added a separate prescription for 100 OxyContin to be filled locally while J.R. waited for the PAP prescription to arrive. Respondent wrote additional prescriptions for 360 Oxycontin 40 mg. and 180 Oxycodone IR (and 200 Percodan) on December 13 and January 4 of the following year.

Only seventeen days after the latter prescription, on January 21, Respondent gave J.R. two more prescriptions, each of which was for 360 tablets of OxyContin 40, one to be filled locally and one to be filled by the PAP. On both February 7 (again after only seventeen days) and February 22 (after only fifteen days), Respondent issued J.R. two more prescriptions (one to be filled locally, the other by the PAP), each for 360 tablets of OxyContin 40 mg. Thus, during February alone, Respondent gave prescriptions which authorized the dispensing of 1440 tablets, which was four times the quantity required based on her dosing instruction. At the visits, Respondent also issued additional prescriptions for 180 Oxycodone and 200 Percodan, which were invariably early, typically by nearly two weeks.

On March 13, based on J.R.'s report of a severe headache, Respondent wrote two prescriptions for both 450 tablets of OxyContin 40 mg. and 360 Oxycodone IR and increased the dosing of both drugs (including doubling the dosing of the Oxycodone IR). Moreover, the next day, Respondent wrote J.R. further

[85] On another occasion, K.Q. reported that she had previously taken methadone, a drug which is used not only to treat pain but to treat addiction as well. Yet Respondent did not inquire as to who had prescribed it to her and why. On another occasion, K.Q. reported that "she believe[d] that some workmen may have gotten into her medications." While Respondent did counsel her to lock up her medications, the incident did not prompt Respondent to institute any type of monitoring of K.Q.

[86] There was no dosing instruction listed for the Percodan.

prescriptions for 450 OxyContin 40 mg. and 360 Oxycodone IR, which she backdated to March 5 with no explanation. *See* 21 CFR 1306.05(a) ("All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued * * *."). Thus, in the month of March, Respondent gave J.R. prescriptions which authorized the dispensing of three times the amount of both OxyContin and Oxycodone IR that her dosing instructions called for.

Respondent's pattern of early and duplicative prescribing did not end there. On April 12, Respondent wrote J.R. two more prescriptions for 450 OxyContin 40 mg. and 360 Oxycodone IR. While these drugs should have lasted until the middle of June, on May 2 (twenty days later), Respondent gave J.R. a prescription for 270 OxyContin 80 mg. and noted that the next day, she would write additional prescriptions for OxyContin and Oxycodone IR.

Six days later, Respondent wrote J.R. two more prescriptions for OxyContin: one for 270 tablets of 80-mg. strength for the PAP and one for 450 tablets of 40-mg. strength presumably to be filled locally; both of the prescriptions were for a thirty-day supply. Moreover, Respondent wrote prescriptions for 360 Oxycodone IR for the PAP (a sixty-day supply) and 180 Oxycodone IR (a thirty-day supply). Yet on May 15, Respondent wrote two more prescriptions (purportedly to be re-mailed) which were to be filled by the PAP—one for 270 tablets of OxyContin 80 mg. and one for 360 tablets of Oxycodone IR. This was followed two days later by prescriptions for 126 tablets of OxyContin 40 mg. (a further one-week supply) and 84 tablets of Oxycodone IR. Finally, on May 31, Respondent wrote J.R. prescriptions for 540 tablets of OxyContin 40 mg. (a thirty-six day supply based on the dosing), and 360 tablets of Oxycodone IR (a thirty-day supply based on the dosing).

Accordingly, in this month alone, Respondent gave J.R. prescriptions authorizing the dispensing of 1080 tablets of OxyContin 80 mg. and approximately 1116 tablets of OxyContin 40 mg. While Respondent's dosing instructions varied between a total of 600 and 720 milligrams a day, even using the larger figure, a single 270 tablet prescription of 80 mg. strength was enough to provide J.R. with a thirty-day supply. Yet Respondent gave J.R. prescriptions for 80-milligram tablets totaling four times this amount (120-days supply) and the prescriptions for 40-milligram tablets provided another sixty-two day supply.

Similarly, during this month, Respondent gave J.R. multiple prescriptions for Oxycodone IR which likely totaled 1700 dosage units.[87] Here again, even using the largest dosing she prescribed for this drug during the month (four tablets, every eight hours or twelve tablets a day), a single 360-tablet prescription was enough to provide J.R. with a thirty-day supply. Respondent's prescriptions thus provided J.R. with more than 4.5 times the amount of drugs he was to take. Similar patterns of prescribing continued throughout the course of Respondent's treatment of J.R.

In her brief, Respondent cites a written report from her pharmacy expert to contend that her prescribings to J.R. complied with the prescription requirement. Resp. Br. at 132 (quoting RX 33, at 6). More specifically, Respondent's expert noted that "patient assistance programs are riddled with problems and delays, and it is common practice for physicians to write the patient extra medications to avoid the more significant problem of the patient going without medications." RX 33, at 6. Continuing, the expert asserted that Respondent "did the medically responsible thing by writing enough to ensure that [J.R.] would not run out of medications, and she accounted for all of the medications she prescribed, and they were all part of his overall dose." *Id.*

I reject these arguments for several reasons. First, J.R. repeatedly came in at intervals well short of thirty days and thus there was little risk that he would run out of medication. Second, even assuming that it is medically appropriate for a physician to initially issue two prescriptions to a patient, when, due to legitimate financial or insurance considerations, that patient must use a PAP, a physician who issues multiple prescriptions still has the duty to ensure that the issuance of the prescriptions in this manner does not create an undue risk of diversion and abuse by accounting for her previous prescriptions. Put another away, before she issues additional prescriptions, the physician must ensure that the new prescriptions are in fact then necessary to treat a legitimate medical condition.

Moreover, the evidence does not support her expert's contention that she "accounted for all of the medications she prescribed, and they were all part of his overall dose." *Id.* at 6. As explained above, the evidence shows that Respondent repeatedly issued J.R. prescriptions which authorized him to obtain drugs in quantities far in excess of what was necessary for a thirty-day supply based on her own dosing instructions. Nor is there evidence that Respondent even questioned J.R. regarding whether he had obtained his PAP prescriptions. For that matter, even the prescriptions Respondent issued J.R. for local filling were several times what was necessary for a thirty-day supply. Accordingly, even if the initial prescriptions Respondent gave to J.R. to treat his migraine headaches were issued for a legitimate medical purpose, many of the subsequent prescriptions were not. Here again, Respondent acted with deliberate ignorance of the likely purpose of the prescriptions.

With respect to other patients, even Respondent's expert (Dr. Schneider) observed that they had engaged in "'aberrant drug-related behaviors,' 'which should have been pursued but weren't,'" including "early refills without adequate documentation and explanations." RX K–1, at 6. These patients included J.N., N.F., W.F., and C.O.

With respect to J.N., the evidence establishes that Respondent did not ask her about her substance abuse history even though both Drs. Hare and Schneider agreed that a physician needs to do "a careful history." Tr. 881. Moreover, at the first visit, Respondent prescribed Xanax to J.N. even though she had not diagnosed her as having anxiety. At the next visit, which was only four days later, Respondent increased the dosing of the OxyContin four-fold even though J.N. had reported less pain. Moreover, this increase in dosing far exceeded what both Drs. Hare and O'Connor testified to as the acceptable titration rate (50 to 100 percent). At the same visit, Respondent also increased four-fold the dosing of J.N.'s Xanax even though she made no findings as to why the drug was medically necessary.

Two months later, J.N. was hospitalized. While in the hospital, J.N. admitted that she had a "history of IV heroin abuse" and that she had started using the drug a week earlier. Moreover, a urine toxicology screen found that J.N. was "positive for opiates, barbiturates, benzodiazepines, and marijuana," and the discharge summary stated that she was pre-occupied with her pain medications. (In addition, J.N.'s boyfriend told investigators that she did not have veins, a classic sign of IV drug

[87] It is noted that Respondent did not document the prescriptions she indicated that she would write on May 3 for the PAP. However, during this period, the prescriptions Respondent gave J.R. for the PAP were typically for 360 tablets of Oxycodone IR, and for either 270 tablets of OxyContin 80 mg. or 450 tablets of OxyContin 40 mg. Given the total quantities of drugs she was dispensing, whether Respondent wrote the former or latter OxyContin prescription is not significant.

abuse, and that it was very difficult to draw blood from her.)

The information regarding J.N.'s admission of IV heroin abuse and the positive urine screens for both illicit drugs (marijuana) and drugs Respondent had not prescribed to her (barbiturates) was contained in the discharge summary which Respondent eventually received. According to Respondent, she did not notice this information because the summary "was a lot of pages" to read (even though the medical information was limited to four pages), and the reference to J.N.'s IV heroin abuse was "buried in" the report (even though it was printed on the bottom of the first page). Relatedly, Respondent offered no credible explanation as to why she had not noticed the condition of J.N.'s veins.

Examined in isolation, Respondent's failure to read the discharge summary might be viewed as simply evidence of medical malpractice. However, after J.N.'s release from the hospital she sought numerous early refills of both Dilaudid and MS Contin, with some being sought and obtained as early as eight or nine days before previous prescriptions should have run out. Again, however, Respondent did not notice. The evidence taken as a whole (including the failure to take J.N.'s substance abuse history, the increase in OxyContin dosing at a rate far in excess of the acceptable titration rate, the increase in Xanax dosing without any indication as to why it was medically necessary, the failure to contact other physicians who were treating her to coordinate prescribing, and the early refills), supports the conclusion that many of Respondent's prescriptions for J.N. were issued outside of the "usual course of * * * professional practice" and lacked a "legitimate medical purpose." 21 CFR 1306.04(a).

In a written submission, Respondent's pharmacy expert opined that people refill prescriptions early for such legitimate reasons as "vacations," not "run[ning] out * * * over the weekend," "because it is much more convenient to pick it up then, and because they are undermedicated." RX 33, at 4. Respondent's expert also maintains that "just because a chronic pain patient is receiving their medication early does not necessarily mean that they have taken all of their medication." *Id.*

As for the last contention, while that may be true, even Dr. Schneider has written that "[f]requent requests for early refills" are a "sign[ ] of possible drug addiction." RX 36, at 3. Moreover, Respondent never requested that J.N. bring in her prescriptions for a pill count. Furthermore, with respect to J.N.'s early refills, one does not need to refill a prescription eight days (or even five days) early to avoid running out on a weekend. Nor is there any indication that Respondent issued any of the early refills because J.N. was going on vacation. Finally, while it is acknowledged that a patient may run out of medications because the prescribed quantity and dosing are not adequate to address a patient's pain, Respondent made no such contention with respect to J.N., who, of course, was abusing drugs by injecting them.[88]

As for N.F., on the date of her first visit, Respondent was told by a pharmacist that N.F. was a doctor shopper. While Respondent cancelled the refills she had authorized, four days later Respondent gave her another prescription for Vicodin with two refills. Thereafter, N.F. began seeking early refills, with many of them being sought more than a week early. Respondent repeatedly complied with N.F.'s requests for drugs, escalated the strength and dosing of the prescriptions, and ignored numerous warning signs that N.F. was addicted.

For example, at one visit, N.F. reported that she had burned herself but did not remember how she had done so. Later on, N.F. told Respondent that she was moving to Illinois. Yet even after telling Respondent this, N.F. continued to return multiple times each month for the next seven months. While N.F. initially told Respondent such stories as she was back to pick up her truck, or that she was in town to testify for the State but that she had moved, Respondent apparently never questioned N.F. as to why she was still coming in months later. During this period, Respondent also wrote N.F. prescriptions and allowed N.F.'s purported family members to pick up the prescriptions. In the month of October alone, Respondent wrote prescriptions on October 2 (100 Roxicodone 30 mg. q4h—a sixteen-day supply), October 5 (same Rx), October 9 (30 Roxicodone 30 mg.—another five-day supply), October 15 (200 Roxicodone 5 mg. 2–3 q4h—an eleven-day supply), October 17 (100 Roxicodone 15 mg. 2–3 q4h—a five-day supply), October 19 (200 Roxicodone 15 mg. 1–2 q4h—a sixteen-day supply), October 24 (200 Roxicodone 5 mg. 3–4 q4h—an eight-day supply), October 26 (50 Roxicodone 30 mg. ½ q4—a sixteen-day supply), October 29 (100 Roxicodone 30 mg. q4h—a sixteen-day supply).

This pattern continued in the ensuing months with N.F. engaging in additional scams, such as claiming that she had lost her prescription and that her neighbors had beaten her up and stolen her drugs. Moreover, during the October 17 visit, N.F. complained of dental pain and Respondent issued her an additional prescription for 30 tablets of Vicodin. Notably, she did not refer N.F. to a dentist who could properly diagnose and treat her condition. Nor did Respondent explain why a Vicodin prescription was necessary given the Roxicodone prescriptions.

While Dr. Schneider opined that N.F.'s chart showed that Respondent needed additional education about "careful monitoring" of patients and reviewing "the big picture," this ignores that Respondent knew from the date of N.F.'s first visit that she had engaged in drug-seeking behavior. Respondent therefore cannot credibly claim that she was duped by N.F. Moreover, even ignoring the early refills N.F. sought and obtained for the Vicodin prescriptions in the first months of her seeking drugs from Respondent, the size and frequency in relation to the dosing instructions of the subsequent Roxicodone prescriptions amply demonstrated that N.F. was engaged in drug-seeking behavior and that the prescriptions were not for a legitimate medical purpose and violated the CSA. 21 CFR 1306.04(a). Moreover, the size and frequency of the prescriptions support the further conclusion that Respondent was deliberately ignorant as to the likely purpose of the prescriptions.

W.F. was treated by Respondent for only approximately five months before his death. At the initial visit, W.F. brought in an impairment rating from the Veterans Administration, and yet Respondent did not contact the VA to obtain W.F.'s treatment records. She also did not inquire with W.F. regarding his past substance abuse before prescribing various narcotics to him including Percocet, OxyContin, and Dilaudid.

Respondent, however, was subsequently informed on two occasions by a psychiatrist who was treating W.F. that the latter had a history of narcotic addiction problems. Respondent was also notified by a case manager who worked at the psychiatrist's practice that the practice had received a phone call from a family member expressing concern that W.F. might be abusing his pain medicines. While Respondent indicated in his medical record that she had discussed

[88] As for the expert's claim that patients legitimately seek early refills for their own convenience, the physician is still obligated to properly supervise her patient's use of a controlled substance and can accommodate both interests by indicating a fill date on the prescription (*e.g.,* "Do Not Fill Until [Date]").

W.F.'s addiction issues with him (who told her that the drugs helped with the pain), she continued to prescribe narcotics to him including both methadone and Roxicodone 30 mg. and yet his record contains no indication that Respondent planned to institute such measures as pill counts or toxicology screens to monitor his use of the drugs. Finally, the Government's Expert not only noted Respondent's failure to contact the VA to obtain other records and to take a substance abuse history, but also that her physical exam was minimal and was not adequate to diagnose his various pain complaints. Respondent admitted that she did not do a substance abuse history (testifying that at the time she did not know what questions to ask, Tr. 2382), and offered no testimony on the issue of the adequacy of her physical examination. While Respondent's conduct in prescribing to W.F. may not have been as egregious as it was with respect to the patients above, she still acted outside of the usual course of professional practice in prescribing controlled substances to him and thus violated the CSA's prescription requirement in doing so.

With respect to C.O., who was also identified by Respondent's Expert as a patient who had engaged in aberrant drug-related behavior, the Government's Expert acknowledged that Respondent's initial physical exam was adequate. However, Respondent again failed to inquire as to his past substance abuse.

C.O. rapidly escalated his use of drugs and engaged in drug-seeking behavior; once again, Respondent did nothing to control him. For example at the first visit, Respondent gave him a prescription for 40 Lortab 7.5/500 with two refills, a prescription which thus authorized the dispensing of 120 tablets and which, based on the maximum daily dose of acetaminophen of 4000 mg., should have lasted fifteen days. Five days later, Respondent, however, gave him another prescription for 40 Lortab 10/500 with two refills. A week later when C.O. saw a nurse practitioner, he reported that he was out of medication and needed more even though he had at least two refills left. C.O. swore, however, that he did not have any refills. Two days later, C.O. told Respondent that he was taking up to twelve Lortab per day.

Three days later, Respondent performed a physical exam finding no obvious pain with ambulation but noted generalized tenderness and that he complained of mid-back pain with range of motion of his shoulders. Respondent changed his prescription to 30 OxyContin 20 mg., with one tablet every eight hours. Four days later, C.O. returned, saw the nurse practitioner and claimed his back pain was worse. His speech was slurred, and he indicated that he had recently taken twice the prescribed dose. Upon finding nothing abnormal in her physical exam, the Nurse Practitioner spoke with Respondent about refilling C.O.'s OxyContin prescription; Respondent then wrote C.O. a new prescription for 60 tablets and doubled the dosing and apparently did so without even seeing C.O. C.O. repeatedly escalated his use of OxyContin (although Respondent briefly reduced his dose, only to increase it again).

Subsequently, C.O. claimed that he had gotten a job on a cruise ship and that he would be going on the ship in a few days for thirteen weeks. While Respondent gave him prescriptions for 60 OxyContin 40 mg. and 360 Lortab 10/500 with three refills, he was back three days later (at which visit he obtained another prescription for 60 OxyContin 40 mg.) and again only five days later, at which visit he obtained four additional OxyContin prescriptions (for 372, 280, 144 and 92 tablets) and one prescription for 350 Lortab, with no refills.

After only six weeks (and six weeks before the thirteen-week period on the ship would have ended), C.O. returned, showed very slurred speech, and sought another prescription for OxyContin because he had run out. While Respondent referred him to get a drug test, there is no indication that he complied. Respondent also did not question C.O. as to why he was back so soon from the ship. C.O. had, however, filled prescriptions at Tucson pharmacies on multiple occasions during the period in which he claimed that he would be on the cruise ship.

While Respondent decided to taper down C.O.'s OxyContin, she continued to prescribe Lortab and eventually started prescribing Roxicodone to him. Notably, while Respondent briefly reduced the dosing of Roxicodone to 240 mg. per day, fifteen days later she was back to prescribing 480 mg. a day, which was the same dose as the OxyContin she had previously prescribed. Moreover, at one of these visits, Respondent had given him a prescription for 100 Lortab (10/500) with five refills, which thus authorized the dispensing of 600 tablets. While this prescription should have lasted at least 75 days, after only six weeks Respondent gave C.O. another Lortab prescription for the same quantity and refills. C.O. used up (whether by taking or selling is irrelevant) this prescription and the refills in a month's time. Although Respondent then temporarily stopped prescribing Lortab to him (because of its acetaminophen content), she continued to prescribe Roxicodone to C.O. Approximately two months later, C.O. entered drug treatment.

Here again, early on in the course of C.O.'s seeing Respondent, there was evidence that he had rapidly self-escalated his use, had sought early refills, and engaged in other scams to obtain more drugs. When Respondent referred him for a drug test, there is no evidence that he complied or that she even sought to determine whether he had gone for the test. Moreover, after C.O. had represented that he was going to be away for thirteen weeks, Respondent did not question him as to why he was back to see her after only six weeks and continued prescribing to him. Later, she refilled his Lortab prescription approximately six weeks early, and, even though C.O. used up this prescription in a month's time, she continued to prescribe to him. As Dr. Hare noted, Respondent did little to supervise and control C.O.'s use of controlled substances. Accordingly, even if it was medically appropriate initially to prescribe controlled substances to C.O., it is clear that many of the prescriptions she wrote were not issued for a legitimate medical purpose and thus violated the CSA.

N.S. was an eighteen-year-old college student who complained of lower-back pain since enrolling at the University of Arizona. Even though N.S. rated his pain as only a four on a scale of one to ten, Respondent's physical exam found that he had a normal neurological exam and could perform a variety of movements without pain, with the exception of his incurring minimal low back pain with lumbar flexion, and Respondent had concluded that the cause of his back pain was a "poor mattress and poor positioning," at N.S.'s first visit, Respondent gave him a prescription for OxyContin 20 mg. (with one tablet to be taken every twelve hours). Moreover, two days later, N.S. returned and told Respondent that he had doubled up on the dose but that hadn't worked. Respondent then told him to take three tablets at a time. This was followed four days later by Respondent's issuance of a prescription for 180 tablets of OxyContin 20 mg., as well as 50 tablets of oxycodone 5 mg. (one tablet every four hours) after he asked for something for breakthrough pain.

Approximately a week later, Respondent gave N.S. an additional prescription for 50 tablets of Roxicodone which increased the strength from five to fifteen milligrams and the dosing to one tablet every three

hours, a four-fold increase in the daily amount of this drug. Moreover, she did so even though N.S. had reported a substantially lower pain level from the visit at which she had added the two previous prescriptions.

With respect to N.S., Dr. Hare observed that, while Respondent had reasonably evaluated N.S., her findings did not support prescribing opioids "and certainly not * * * in the aggressive doses she prescribed." GX 46, at 15. Dr. Hare further observed that N.S. had rapidly self-escalated his dosing "to a large amount," and the fact that he tolerated these doses suggested that he was either "not opioid-naïve, or [that] he was not taking the medication." *Id.* I further note that Respondent increased N.S.'s dosing nearly four-fold (from 40 mg. to 150 mg. a day) in only four days, a rate which exceeded by several times the acceptable rate of titration as testified to by both parties' experts. *See* RX 8, at 2 (testimony of Respondent's expert that "no more than 50% to 100% every 5 or more days" is acceptable). Dr. Hare also noted that Respondent had further increased the amount of Roxicodone at the subsequent visit even though N.S. was reporting less pain. Finally, Respondent did not specifically address any of Dr. Hare's findings with respect to N.S. Based on the above, I conclude that, even if Respondent was duped by N.S. and believed that he was in pain, she acted outside of the usual course of professional practice in prescribing controlled substances to him.

Respondent also prescribed to both M.D. and S.R., who lived together. At his first visit, M.D. complained that he had fallen off a bicycle and injured his back and leg. He also reported that another physician had previously prescribed to him OxyContin 80 mg., Oxyfast and methadone, but that he had been off these medications for several months because the prescribing physician had "left the office." Respondent did not attempt to contact the office of M.D.'s previous physician to determine whether his statement was true and/or to obtain his treatment records. Nor did she obtain a pain rating and indeed, during the physical found that he was not in acute distress.

Following a physical exam, Respondent issued M.D. prescriptions for 60 OxyContin 80 mg. (q12h) (the second strongest formulation of the drug), 30 oxycodone 5 mg., and Oxyfast. Later that day, a pharmacist called and told Respondent that M.D. was known to forge prescriptions and had been arrested; Respondent told the pharmacist not to fill the prescriptions. M.D., however, had managed to get the OxyContin filled at another pharmacy. At M.D.'s next visit, he again sought OxyContin. Respondent did, however, question Respondent about the incident at the pharmacy and as to why he had gone to a different pharmacy than the one he had put on his pain contract. Respondent then refused to give him a new prescription, and, after that, M.D. did not go back to her.

Subsequently, Respondent received a phone call reporting that a week earlier, M.D. had been admitted to a local hospital in a coma and, upon his admission, had in his possession a prescription vial which contained methadone 40 mg. tablets; the vial's label indicated that it had originally contained Dilaudid which Respondent had prescribed to S.R.

Respondent had first treated S.R. approximately nine weeks earlier when she complained of abdominal and pelvic pain and reported that she had a history of cystitis and active hepatitis C. S.R. also indicated that another physician had prescribed Xanax and Vicodin for her and that she was taking her late husband's leftover OxyContin and Dilaudid. Respondent's physical exam was limited to noting that she had pain with ambulation, that she limped, and that she had tenderness over her abdomen. As the Government's expert noted, Respondent's physical exam was minimal, she did not obtain records from other physicians who had treated S.R. before prescribing, and her evaluation was inadequate to justify prescribing the controlled substances which she did (OxyContin, Dilaudid, and Xanax). Apparently, Respondent did not find troubling S.R.'s use of drugs which had not been prescribed to her (OxyContin and Dilaudid).

Two weeks later, Respondent gave S.R. new prescriptions for all three drugs even though the original Xanax prescription (90 tablets TID PRN) should have lasted thirty days and S.R. was to come in for a recheck in two weeks. Moreover, the Xanax prescriptions she issued on this date provided for 90 tablets with two refills (a total of 270 tablets—a ninety-day supply if taken as directed). Yet six weeks later, S.R. claimed that her Xanax had gotten wet and that the pills had dissolved and could not be taken. Even if the story was true, S.R. should still have had a refill for 90 tablets left. Respondent nonetheless gave her a new prescription for 100 tablets of Xanax with two refills.

Respondent subsequently counseled S.R. about the incident involving M.D., and S.R. denied that he could have gotten her medications. Moreover, after S.R. failed to go to another doctor on a referral, Respondent refused to write any more prescriptions for her until she obtained more documentation of her condition.

While Respondent's conduct in prescribing to M.D. and S.R. was not as egregious as her prescribing to the patients discussed above, I nonetheless conclude that the prescriptions were issued outside of the usual course of professional practice and lacked a legitimate medical purpose. While Dr. Hare did not offer an opinion specific to M.D., both parties' experts were in agreement that when a patient is not currently on opioids, they should be started at a low dose and titrated up gradually to achieve pain relief while minimizing adverse side effects. At his first visit, M.D. admitted that he had not been on opioids for several months. Yet Respondent started him out with a daily dose of 160 mg. of OxyContin plus other drugs, which was the same dose that M.D.'s previous doctor had supposedly prescribed although whether this was in fact the case is unknown because Respondent never even attempted to contact this physician. While M.D. claimed to have back and leg injuries, Respondent did not even obtain pain ratings from him. While I note that Respondent told the pharmacy not to fill his prescriptions upon being informed that he was known to forge prescriptions, the prescriptions should never have been written in the first place.

As for S.R., Respondent did not find it troubling that she was taking two powerful and highly abused narcotics—Dilaudid and OxyContin—for which she did not have prescriptions. Not only was Respondent's physical examination minimal, she did not obtain records from other treating physicians including the one who supposedly had prescribed Xanax and Vicodin to S.R. before she prescribed Dilaudid, Oxycontin, and Xanax for her. Indeed, it appears that her diagnosis was based largely on S.R.'s representation as to her condition. Respondent also gave S.R. early refills. While Respondent eventually refused to write more prescriptions for her, it should not have taken three months to conclude that S.R. was seeking drugs to abuse them.

Respondent also prescribed to W.O. and J.O., a married couple, each of whom claimed to have been injured in various (but different) motor vehicle accidents. As found above, Respondent issued both persons numerous prescriptions for schedule II drugs including OxyContin, Roxicodone and Percocet well before previously issued prescriptions would have run out, with some prescriptions being issued only

days after earlier prescriptions were issued and weeks early. Moreover, on various occasions, Respondent increased the dosing of both persons' medications without providing any explanation in their respective medical records. Indeed, at one visit, Respondent doubled the dosing of W.O.'s OxyContin prescription even though he had rated his lower back pain as "zero."

Moreover, W.O. and J.O. engaged in other problematic behavior including J.O.'s claiming that their house had been burglarized and that all of their medications had been stolen, W.O.'s attempt to alter a Percocet prescription issued to J.O. by tearing out the fill date, J.O.'s reported selling of Percocet, and J.O.'s giving 300 tablets of methadone to W.O. although she had previously told Respondent that she had left W.O. Finally, during the course of treating J.O., Respondent received information from the State Nursing Board that J.O. had been subjected to disciplinary proceedings because she had abused medications and taken some from a nursing home where she worked; Respondent received this information before J.O. gave W.O. half of her methadone prescription. Yet Respondent continued to prescribe to her for several months thereafter. Finally, notwithstanding the various reports she had received, Respondent falsely wrote the State Nursing Board that there was "no evidence" that J.O. was continuing to divert drugs.

Accordingly, even if Respondent's initial prescriptions to J.O. and W.O. were issued in the usual course of professional practice and for a legitimate medical purpose, it is clear that many of the subsequent prescriptions she issued to J.O. and W.O. did not comply with the prescription requirement. Moreover, whether Respondent's conduct in writing the letter to the State Board is considered under factor two (the experience factor) or under factor five (such other conduct which may threaten public health and safety), it does not reflect well on her candor.

Respondent also ignored evidence of problematic behavior engaged in by P.H., M.H. (P.H.'s mother) and A.B. (who lived with P.H.). For example, several months after Respondent started treating P.H., the latter reported that her Percocet had been stolen two weeks earlier and that she had only Darvocet N100 to take following the theft. Respondent had not, however, prescribed this drug to P.H., yet Respondent did not question her as to how she had obtained this drug. Several months later, P.H. complained that the OxyContin she was taking made her nauseous. P.H.'s medical record contained no indication that Respondent had previously prescribed OxyContin to P.H. Yet Respondent did not question P.H. as to how she had gotten this drug.

Eight months after this incident, Respondent was called by a pharmacist and told that P.H. had filled a prescription for Percocet (which Respondent was then prescribing to her) which had been issued by another doctor. While Respondent questioned P.H. about the incident, she did not contact the other doctor to discuss the extent to which P.H. was obtaining other prescriptions and to coordinate their prescribing. Five months later, Respondent received another phone call from a pharmacist and was told that P.H. was obtaining 84 Vicodin tablets every two weeks from the same doctor who had prescribed Percocet to her. Again, however, there is no indication that Respondent contacted this doctor.

Subsequently, P.H. was diagnosed by an emergency room physician as having a skin condition and told Respondent that she had an appointment to see a dermatologist in two weeks. According to the Government's Expert, the condition did not justify "anything other than mild analgesics," yet Respondent nearly doubled the dosing of Roxicodone from 480 mg. to 900 mg. a day. Moreover, there is no evidence that Respondent ever contacted the dermatologist to coordinate any prescribing that might be necessary to treat the condition. Furthermore, during this period, Respondent issued Percocet prescriptions to P.H. in amounts and at a frequency that would be toxic if P.H. was actually taking the drug according to Respondent's own evidence regarding the maximum daily dose. P.H. was subsequently identified by her own mother (M.H.) as the person who had passed the OxyContin which had been prescribed to M.H. to the latter's nephew during the July 29, 2001 diversion incident.

At A.B.'s initial visit, she reported that she was taking Percocet and a non-controlled drug. Here again, Respondent did not contact the physician who had prescribed the drugs to her. Moreover, while A.B. reported that an MRI had shown that she had a herniated disk, there is no evidence that Respondent attempted to obtain the MRI report. Shortly thereafter, A.B. began to seek early refills which Respondent typically approved without any documentation of her questioning A.B. as to why she needed the refills, which in some instances were as many as seventeen days (on a thirty-day Rx) early.[89]

At M.H.'s first visit, Respondent diagnosed her with shingles and gave her a prescription for 60 tablets of OxyContin 20 mg. While four days later M.H. returned and told Respondent that her insurance wouldn't cover the drug, Respondent did not ask her to return or destroy the prescription. Two days later, either P.H. or A.B. picked up the prescription and passed it to M.H.'s nephew who was in another car. While Respondent counseled M.H. about the incident at a subsequent visit (which was a criminal act), there is no credible evidence that she ever discussed the incident with P.H. and A.B. Moreover, while three weeks later the same pharmacist who reported the July 29 incident again told Respondent that he believed P.H. and A.B. were selling their drugs, once again there is no indication that Respondent questioned either P.H. or A.B. after receiving this additional report. Respondent, however, continued to prescribe to them and instituted no measures such as pill counts and drug screens to monitor them.

Following the incident, Respondent continued to prescribe Percocet and Roxicodone to P.H. Several months later, Respondent again received information suggesting that P.H. had either obtained or was attempting to obtain Vicodin from another physician (P.H.'s dermatologist). Yet the same day she received this information, Respondent again prescribed 200 tablets of Percocet and 500 tablets of Roxicodone and did not question P.H. about whether she was obtaining additional controlled substance prescriptions from other doctors. Nor did she contact the other physician. Subsequently, Respondent added Dilaudid and continued to prescribe the other drugs to her as well. Respondent did not have P.H. sign a pain contract

[89] In one instance, A.B. sought a refill of OxyContin and oxycodone a week after having undergone back surgery. A.B. complained that she had only been given 20 Percocet and was in severe pain, and Respondent wrote prescriptions for 60 Oxycontin 40 mg. and 200 oxycodone 5 mg. Here, again, she did not coordinate her prescribing with A.B.'s surgeon.

It is acknowledged that a patient may seek an early refill because a previous prescription does not adequately address legitimate pain. But as Respondent's own records indicate (and as Dr. Schneider testified), it is the physician—and not the patient—who is responsible for deciding whether a change in the dose is medically necessary. *See* GX 56, at 3 (Respondent writing in A.B.'s chart: "Any dose changes need to be ordered by me."). Notwithstanding the above statement (which appeared in numerous other charts), Respondent rarely exercised control over her patients and repeatedly acceded to the self-escalation they engaged in.

until May 2002, at which time she was aware that she was being investigated.

Here again, even assuming that these three patients initially presented with legitimate medical conditions which required treatment with controlled substances and that Respondent had a legitimate medical purpose in prescribing to them, Respondent nonetheless violated the prescription requirement because she failed to properly supervise her patients in their use of controlled substances. *See Gonzales,* 546 U.S. at 274 ("the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse"). She repeatedly ignored that these patients were obtaining drugs from other doctors or the street; she prescribed drugs for conditions that were putatively being treated by other physicians and yet did not contact the other physicians to coordinate their prescribings; she issued new prescriptions well before previous prescriptions should have run out and did so without even questioning the patients as to why they already needed additional medication; she did not even counsel A.B. and P.H. after receiving reports that they had engaged in criminal acts and were selling their medications; she prescribed Percocet to P.H. in quantities that would have been toxic if she was actually taking the drug (as opposed to selling it); and she did nothing to monitor P.H., A.B. and M.H.'s use of their medications. Thus, even if these patients initially presented to Respondent legitimate medical complaints, Respondent repeatedly acted outside of the usual course of professional practice in the course of prescribing to them.

As the forgoing demonstrates, in numerous instances beyond those identified by the ALJ, Respondent issued prescriptions which violated the CSA's prescription requirement. With respect to several of the patients, Respondent did so either knowing or having reason to know that the prescriptions were not being sought for a legitimate medical purpose.

This conduct was more than enough to establish the Government's *prima facie* case to deny Respondent's application. Indeed, DEA has revoked a practitioner's registration for as few as two incidents of diversion and has done so where the conduct was far less egregious than that in which Respondent engaged. *See, e.g., Alan H. Olefsky,* 57 FR 928 (1992) (revoking registration of practitioner who presented two fraudulent prescriptions); *see also Sokoloff* v. *Saxbe,* 501 F.2d 571, 574 (2d. Cir. 1974) (upholding revocation based on three acts of unlawful distribution).

The ALJ's reasoning that the Government had only shown that Respondent's prescribing to "two patients out of more than 900" lacked a legitimate medical purpose, and that her "overall medical practices are not consistently lacking in legitimate purpose," ALJ at 150, is thus erroneous. More disturbingly, this reasoning has been previously—and expressly—rejected by the Agency. *See, e.g., Medicine Shoppe—Jonesborough,* 73 FR 364, 386 & n.56 (2008) (noting that pharmacy "had 17,000 patients," but that "[n]o amount of legitimate dispensings can render * * * flagrant violations [acts which are] 'consistent with the public interest.' "); *Caragine,* 63 FR at 51600 ("[E]ven though the patients at issue are only a small portion of Respondent's patient population, his prescribing of controlled substances to these individuals raises serious concerns regarding [his] ability to responsibly handle controlled substances in the future.").

I therefore conclude that the evidence relevant to Respondent's experience in dispensing controlled substances and her record of compliance with applicable laws related to controlled substances establishes *prima facie* that granting Respondent's application would be "inconsistent with the public interest." 21 U.S.C. 823(f).

Factor Five—Such Other Conduct Which May Threaten Public Health or Safety

Respondent also prescribed controlled substances to F.L. and B.L., who were father and son. As found above, F.L., who suffered from chronic pancreatitis, lower back pain and diabetes (which led to the amputation of one of his lower legs) was receiving approximately 7000 dosage units a month of schedule II drugs including OxyContin 40 mg., OxyIR, Percocet and Percodan, and was obtaining some of the drugs through the Purdue Frederick (who manufactured both OxyContin and Oxy IR) Patient Assistance Program. At the last visit before his death, Respondent issued him prescriptions for 1320 tablets of OxyContin 40 mg. and 4800 Oxycodone IR, which were to be filled through the PAP program.[90]

Six days after F.L.'s death, B.L., who was obtaining Dexedrine—a schedule II amphetamine and stimulant, presumably for fatigue and to prevent weight gain,[91] saw Respondent and obtained another prescription for Dexedrine. Moreover, as found above, during this visit, B.L. admitted to Respondent that he had accepted the delivery of the 1320 OxyContin 40 mg. tablets dispensed pursuant to his father's prescription. Respondent admitted to this fact in her plea agreement and that she had also failed to rescind the Dexedrine prescription she issued to B.L. Based in part on this conduct, Respondent ultimately pled guilty to violating 18 U.S.C. 3.

In this proceeding, Respondent vigorously contested whether she committed any crime in failing to report B.L.'s diverting of the prescription to law enforcement authorities. In this regard, Respondent put forward evidence that there is no requirement that a physician report a patient's act of diversion to the authorities. *See* RX O.[92] Whether her conduct constituted a crime was an issue that should have and could have been litigated in the criminal proceeding (and with respect to B.L., it was not just her failure to report but also her failure to rescind the prescription which was the basis for conviction).[93] In any event, in light of the extensive and egregious evidence found under factors two and four, Respondent's conviction with respect to this incident adds very little to the Government's case.

Sanction

Under longstanding Agency precedent, where, as here, "the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must "present sufficient mitigating evidence to assure the Administrator that [she] can be entrusted with the responsibility carried by such a registration." *Medicine Shoppe,* 73 FR at 387 (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). "Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995),

[90] To make clear, while F.L.'s prescriptions were very large, there is no evidence establishing that the prescriptions were issued in violation of 21 CFR 1306.04.

[91] While the progress notes indicate that Respondent was treating B.L. for weight gain and an eating disorder, there is no indication in any of the progress notes as to his height and weight.

[92] As support for this proposition, Respondent also cited a document entitled: *Prescription Pain Medicines: Frequently Asked Questions and Answers for HealthCare Professionals, and Law Enforcement Personnel.* RX T. DEA never published the document in the **Federal Register**, because it "was not an official statement of the agency," and "withdrew the document because it contained misstatements." 69 FR 67170 (2004).

[93] This is not a close case and therefore I need not consider whether a practitioner's failure to report an act of diversion by a patient is grounds for denying an application.

[DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [her] actions and demonstrate that [she] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Relatedly, a respondent's lack of candor is an important and typically dispositive consideration in determining whether she has accepted responsibility for her misconduct. *See id.* (''Candor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a physician's registration is consistent with the public interest'' and noting that physician's ''lack of candor and failure to take responsibility for his past legal troubles * * * provide substantial evidence that that his registration is inconsistent with the public interest.''). *See, e.g., Prince George Daniels,* 60 FR at 62887.

Finally, to rebut the Government's *prima facie* case, an applicant/registrant is required not only to accept responsibility for her misconduct, but also to demonstrate what corrective measures she has undertaken to prevent the re-occurrence of similar acts. *Jayam Krishna-Iyer,* 74 FR 459, 464 & n.8 (2009). Both conditions are essential requirements for rebutting the Government's *prima facie* showing that granting an application or continuing an existing registration would be ''consistent with the public interest.'' 21 U.S.C. 823(f).

In her recommended decision, the ALJ asserted that Respondent ''took full responsibility for her actions and the consequences that followed those actions.'' ALJ at 155. Not so. Indeed, with respect to her most egregious misconduct as established on this record—her six prescribings of various schedule II narcotics to H.T., knowing that he was not seeking the drugs to treat a legitimate medical condition but rather to abuse them—Respondent denied any failing on her part and maintained that she was duped. Relatedly, Respondent also denied that she had falsified H.T.'s medical records (which she did on six occasions) to indicate that she had done a physical exam when she had not.

With respect to her falsification of H.T.'s patient record, the ALJ explained that although this ''does not reflect well upon Respondent's propensity for truthfulness, * * * a single instance does not rise to the level of the pervasive pattern of falsification that was present in'' another DEA proceeding, *see* ALJ at 155 (citing *Jayam Krishna-Iyer,* 71 FR 52148, 52155–56 (2006)), ''particularly in light of the Respondent's substantial rehabilitation since then.'' *Id.*

The ALJ's reasoning ignores that Respondent falsified H.T.'s record six different times in order to provide a justification for prescribing controlled substances. Thus, Respondent's acts of falsification were, in fact, even more extensive than that engaged in by Krishna-Iyer, who was shown to have falsified patient records on three separate occasions. Whether a practitioner's falsifications involve a single patient multiple times or multiple patients a single time is irrelevant.

Moreover, throughout this proceeding, Respondent has continued to deny that she falsified H.T.'s records. In her brief, she contends that she performed physical exams but that the transcripts do not reflect them because H.T. ''was quite familiar with the routine of bending over to touch his toes, allowing me to palpate his lumbar muscles, sitting on the exam table and lifting his legs, having me test his ankle strength and allowing me to lift his leg in a straight leg raising test'' and that after all of the exams she had performed on him (when she had not examined him in nearly two years), ''there are necessarily fewer specific directions to the patient'' (in fact, there were no directions to H.T. related to any of the above parts of the exam). Respondent's Resp. to Gov.'s Exc. at 2. As found above, Respondent's contention is patently absurd and disingenuous. Given the scope of the falsifications, it buttresses the conclusion that Respondent has failed to accept responsibility for her misconduct.[94]

Nor is this the only evidence that supports the conclusion that Respondent has failed to accept responsibility. With respect to patient J.N., whose admission of IV heroin abuse and positive-drug-test results for various illicit drugs were contained in a discharge summary, Respondent offered nothing but excuses for failing to read the report. *See* Tr. 2367–68 (contending that four-page report ''was a lot of pages'' and that the reference to J.N.'s heroin abuse was ''buried in'' the report when it was at the bottom of the first page).

In other instances, Respondent did not even address the propriety of her prescribings to other patients even though the prescribings were clearly at issue. For example, on the first day she prescribed to N.F., a patient who engaged in a variety of obvious scams including claiming that she had moved to Illinois, Respondent was told by a pharmacist that N.F. was a doctor shopper. Yet in her testimony, Respondent did not even address why she prescribed to her.

While one of Respondent's generic arguments is that she was duped by her patients, *see* Resp. Proposed Findings at 192 (''Being duped by professional con-men does not indicate that I am a threat to the public interest''), she cannot credibly contend that she was duped by N.F. when she was told by a pharmacist on day one that N.F. was a doctor shopper and yet continued to prescribe to her. Nor can Respondent credibly claim to have been duped in the case of K.Q., who repeatedly sought and obtained prescriptions for Xanax and Valium not merely days, but months early.

As the forgoing demonstrates, Respondent has failed to accept responsibility for many of her most egregious acts of misconduct. As I recently explained, even where the Government's proof establishes that a practitioner has committed only a few acts of diversion—and in this case the record demonstrates that Respondent committed numerous acts inconsistent with the public interest—an applicant/registrant is not entitled to be registered absent a substantial showing that she has accepted responsibility. *See Krishna-Iyer,* 74 FR at 464.[95]

[94] On the issue of Respondent's propensity for truthfulness, I further note Respondent's letter to the Arizona Nursing Board in which she falsely stated that there was ''no evidence'' that J.O. was continuing to divert drugs. Respondent made this statement notwithstanding that J.O. had previously admitted to giving 300 tablets of methadone to her husband, that Respondent had received reports that J.O. was selling Percocet, and the incident in which her prescription had been altered.

[95] Respondent also contends that her practices between the service of a search warrant in May 2002 and November 2002, when she lost her registration, ''are very significant and highly relevant in determining whether my having a registration is in the public interest.'' Resp. Prop. Findings at 200. As I have previously explained, evidence of one's compliance with Federal law may ''be entitled to some weight in assessing whether a registrant/applicant has demonstrated that she can be entrusted with a new registration where the Government's proof is limited to relatively few acts and a registrant puts forward credible evidence that she has accepted responsibility for her misconduct.'' *Krishna-Iyer,* 74 FR at 464.

Here, however, the record establishes that Respondent committed not merely a few, but rather numerous acts that were inconsistent with the public interest and that she has not accepted responsibility for her misconduct. Of further note, while Respondent was clearly aware that the State Board was investigating her, she nonetheless prescribed more Oxycontin to H.T. and falsified his

Finally, while Respondent maintains that she has undergone extensive remedial training including CME and working with a mentor to improve her record-keeping and management of patients, her testimony suggests that she has learned little from the experience. For example, even though Respondent's mentor had specifically identified various patients as having "received early refills without adequate documentation and explanation," RX K–1, at 6, Respondent testified that she could not answer the question as to whether she had issued early refills without documenting the reason why, because the definition of the term is "not clear and not well agreed upon." Tr. 2345. Even more disturbing is her testimony that it is not harmful for a patient to use a controlled substance (in the case of this patient, no less than OxyContin) which had not been prescribed to them but to a family member. Amplifying her views, Respondent claimed that this is "just continuing medical care" and causes "no harm to the patient" because people "develop an area of knowledge about their medications." *Id.* at 2395 & 2401. In her view, the notion that a person should not take a controlled substance that has not been prescribed to her is simply "our party line as a physician," and that there is "almost always * * * no harm because people know * * * what they are taking." *Id.* at 2400–01.

As I have noted in other cases,[96] the diversion of controlled substances has become an increasingly grave threat to this nation's public health and safety. According to The National Center on Addiction and Substance Abuse (CASA), "[t]he number of people who admit abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003." National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005). Moreover, "[a]pproximately six percent of the U.S. population (15.1 million people) admitted abusing controlled prescription drugs in 2003, 23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000)." *Id.* Relatedly, "[b]etween 1992 and 2003, there has been a * * * 140.5 percent increase in the self-reported abuse of prescription opioids," and in the same period, the "abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse." *Id.* at 4.

Moreover, according to the Substance Abuse and Mental Health Services Administration's (SAMHSA) 2007 National Survey on Drug Use and Health, more than half (56.5%) of "individuals aged 12 or older who used prescription opioid pain relievers nonmedically in the past year * * * acquired these drugs from a friend or relative for free." U.S. Dept. of Justice, *National Prescription Drug Threat Assessment 2009* 6 (April 2009).[97] Furthermore, "data from a 2006 study released in the June 2008 edition of the *American Journal of Public Health* indicated that 22.9 percent of 700 participants in the study 'loaned' their medications to someone else, and 26.9 percent 'borrowed' someone else's prescriptions medication." *Id.* at 15–16. Finally, "[n]early 22 percent of" the participants in this study "reported sharing prescription pain medications." *Id.* at 16.

Intra-family diversion is thus an important contributor to the diversion and abuse of controlled substances. It is manifest that notwithstanding her remedial efforts, Respondent still does not comprehend the seriousness of this problem. Because Respondent has utterly failed to demonstrate that she can be entrusted with a new registration, I am compelled to reject the ALJ's conclusion that granting her application would be consistent with the public interest. Respondent's application will therefore be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Jeri B. Hassman, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective March 25, 2010.

Dated: February 2, 2010.

Michele M. Leonhart,

Deputy Administrator.

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records. Respondent's willingness to violate Federal law, even at a time when she knew she was under investigation, and falsify records to provide a medical reason to justify a drug deal, provides ample reason to give no weight to this evidence.

[96] *See, e.g., Krishna-Iyer,* 74 FR at 464; *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007).

[97] I also take official notice of the findings of the SAMSHA Survey.

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